

1178

No. 3197

United States

Circuit Court of Appeals

For the Ninth Circuit.

_____ 1178

STEAMER AVALON COMPANY, a Corporation,
Appellant,

vs.

HUBBARD STEAMSHIP COMPANY, a Corporation,
Claimant of the American Steamer
"GENERAL HUBBARD," Her Engines,
Boilers, Machinery, Tackle, Furniture and
Cargo,

Appellee.

Apostles on Appeal.

Upon Appeal from the Southern Division of the
United States District Court for the
Northern District of California,
First Division.

FILED
JUN 28 1910
SAN FRANCISCO

United States
Circuit Court of Appeals
For the Ninth Circuit.

STEAMER AVALON COMPANY, a Corporation,
Appellant,

vs.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration, Claimant of the American Steamer
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle,
Furniture, and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpora-
tion,

Claimant.

Praeceptum for Apostles on Appeal.

To the Clerk of the Above-entitled Court:

The libelant, Steamer Avalon Company, a corporation, having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of this Court entered herein, you are hereby requested to prepare and certify the apostles on appeal to be filed in said Appellate Court in due course. Said apostles on appeal are to include in their proper order and from the following pleadings, proceedings and papers on file, to wit:

1. All those papers required by Section 1 of Paragraph I of Rule IV of the Rules of Admiralty of the United States District Court of Appeals for the Ninth Circuit.

2. All pleadings in said cause, and all the exhibits annexed thereto.

3. All the testimony and other proofs adduced in the cause, including the testimony taken at the trial; all depositions taken by either party and admitted in evidence, and all exhibits introduced by either party, said exhibits to be sent up as original exhibits.

4. The opinion and decision of the Court. [1*]

5. The final decree and notice of appeal.

6. The assignment of errors.

Dated: June 20, 1918.

IRA S. LILLICK,

Proctor for Libelant and Appellant.

[Endorsed]: Filed Jun. 25, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [2]

Statement of Clerk U. S. District Court.

PARTIES.

Libelant: Steamer Avalon Company, a corporation.

Respondent: The American Steamer "General Hubbard," her engines, boilers, etc.

Claimant: Hubbard Steamship Company, a corporation.

PROCTORS.

For the Libelant: Ira S. Lillick, Esquire, San Francisco.

For the Respondent and Claimant: Ira A. Campbell, Esquire, and McCutchen, Olney & Willard, San Francisco.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

PROCEEDINGS.

1916.

August 1. Filed verified libel for salvage in the sum of \$20,000.

Issued monition for the attachment of the above-mentioned steamer, which monition was afterwards, on August 15th, 1916, returned and filed in this office with the U. S. Marshal's Return of Service endorsed thereon. [3]

August 3. Filed claim of Hubbard Steamship Company, a corporation, to said steamer "General Hubbard."

Filed admiralty stipulation (bond) in the sum of \$20,000 for the release of said steamer.

October 30. Filed answer of claimant.

1917.

March 26. This cause this day came on for trial, the Honorable Maurice T. Dooling, District Judge, presiding. The Court ordered that libelant be allowed to file an Amendment to libel. After hearing testimony and argument of respective proctors, it was further ordered that this cause stand submitted to the Court for decision.

Filed Libelant's amendment to libel.

Filed depositions of Jens L. Christ-

ensen and Peter Rodland, taken on behalf of libelant.

Filed depositions of Gustaf W. Johnson, Charles W. Watts and O. S. Wickland, taken on behalf of claimant.

April 12. Filed one volume of testimony taken in open court.

1918.

February 8. Filed opinion in which it was ordered that libelant recover the sum of \$2,000 and costs.

25. Filed final decree.

June 25. Filed notice of appeal.
Filed bond on appeal.

July 2. Filed assignment of errors. [4]

In the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD," Her Engines, Boilers, Machinery, Tackle, Apparel, Furniture and Cargo,
Respondent.

Libel.

To the Honorable MAURICE T. DOOLING, Judge
of the District Court of the United States, in
and for the Northern District of California:

The libel of Steamer Avalon Company, a corporation, duly organized and existing under and by virtue of the laws of the State of California, owner of the steamer "Avalon," against the American steamer "General Hubbard," her engines, boilers, machinery, tackle, apparel, furniture and cargo, and against all persons lawfully intervening for their interest therein, in a cause of salvage, civil and maritime, alleges:

I.

That at all of the times hereinafter mentioned the Steamer Avalon Company, a corporation, was, and still is, a corporation, duly organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the city and county of San Francisco, in said State.

II.

That at all of the times hereinafter mentioned the libelant, Steamer Avalon Company, was, and still is, the owner of the steamer "Avalon," a vessel of about 881 gross tons register, of a length of 196.9 feet, a breadth of 41 feet, a depth of 13.7 feet and a [5] five hundred fifty (550) indicated horse power; that said vessel was constructed of wood and carried a full and complete complement of officers and crew.

III.

That at all of the times herein mentioned the value of the said steamer "Avalon" was, and is, the sum of \$125,000.

IV.

That libelant is informed and believes, and upon such information and belief alleges, that on or about, to wit, the 25th day of July, 1916, at 1 o'clock A. M. of said day, the steamer "General Hubbard," on a voyage bound for San Pedro, California, was in distress at a point approximately fourteen (14) miles northeast, one-fourth east, from Cape Meares Lighthouse, in latitude $45^{\circ} 22'$ north, longitude $120^{\circ} 21'$ west, and at said time was playing her searchlights and sending up four red rocket signals and was signaling for assistance.

V.

That the said steamer "Avalon," on a voyage north to Willapa Harbor, Washington, and at a point about four miles off Cape Meares Lighthouse, perceived the said steamer "General Hubbard" and her distress signals and her danger, and then and there changed her course from her then voyage and proceeded to the said steamer "General Hubbard," and discovered said steamer to be entirely disabled, the crank-shaft of the said "General Hubbard" being broken beyond temporary repair, and at said time and place there was a heavy westerly swell and the wind freshened from the west, and the said steamer "Avalon," under difficulties, made fast her lines, or hawsers, to the said steamer "General Hubbard," for the purpose of towing the said steamer

“General Hubbard” to the port of Astoria; that the said steamer “Avalon” then proceeded to tow the said steamer “General Hubbard” to said port of Astoria, Oregon, and, on account of the strong currents at the Columbia Bar had great difficulty in [6] so towing said steamer “General Hubbard,” as, by reason of the said strong currents, the said vessels were laboring heavily, and both of said vessels were, at said place, in a perilous position, and arrived at Astoria, Oregon, at about 10 o’clock P. M. Tuesday, July 25th, 1916, and at or about said time said steamer “General Hubbard” was anchored safely off, or near, Astoria, Oregon.

VI.

That at the time and place hereinbefore mentioned the master of the said steamer “General Hubbard” informed the master of the said steamer “Avalon” that said steamer “General Hubbard,” was entirely disabled and unable to proceed without assistance, and requested the master of said steamer “Avalon” to assist him by towing the said steamer “General Hubbard” to, or near, Astoria, Oregon.

VII.

That the said steamer “General Hubbard” is an American steamer and her value, as libelant is informed and believes and, therefore, alleges, is about Three Hundred Thousand (300,000) Dollars.

VIII.

That the value of the cargo on said steamer “General Hubbard” at the times and places herein mentioned, as libelant is informed and believes and,

therefore, alleges, was about Twenty-five (25,000) Dollars.

IX.

That the libelant verily believes, and therefore alleges, that said service was a valuable service, for which the said libelant is entitled to the sum of Twenty Thousand (20,000) Dollars, or thereabouts.

X.

That the said steamer "General Hubbard" is now in the port of San Francisco, in the Northern District of California, and [7] within the jurisdiction of the United States, and of this Honorable Court.

XI.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said steamer "General Hubbard," her engines, boilers, machinery, tackle, apparel, furniture and cargo, and that all persons claiming any right, title or interest in said vessel, or her cargo, may be cited to appear and answer all the matters aforesaid, and that the said steamer "General Hubbard" and her cargo, may be condemned and sold to pay the amount which shall be found due to said libelant, with interest and costs, and that it may have such other and further

relief as in law and justice it may be entitled to receive.

STEAMER AVALON COMPANY.

By W. H. WOOD, (Seal)

President.

IRA S. LILLICK,

Proctor for Libelant. [8]

State of California,

City and County of San Francisco,—ss.

W. H. Wood, being first duly sworn, deposes and says, that he is an officer, to wit, the president of the libelant herein, Steamer Avalon Company; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and, as to those matters, that he believes it to be true.

W. H. WOOD.

Subscribed and sworn to before me this 1st day of August, A. D. 1916.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Aug. 1, 1916. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [9]

therefore, alleges, was about Twenty-five (25,000) Dollars.

IX.

That the libelant verily believes, and therefore alleges, that said service was a valuable service, for which the said libelant is entitled to the sum of Twenty Thousand (20,000) Dollars, or thereabouts.

X.

That the said steamer "General Hubbard" is now in the port of San Francisco, in the Northern District of California, and [7] within the jurisdiction of the United States, and of this Honorable Court.

XI.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said steamer "General Hubbard," her engines, boilers, machinery, tackle, apparel, furniture and cargo, and that all persons claiming any right, title or interest in said vessel, or her cargo, may be cited to appear and answer all the matters aforesaid, and that the said steamer "General Hubbard" and her cargo, may be condemned and sold to pay the amount which shall be found due to said libelant, with interest and costs, and that it may have such other and further

relief as in law and justice it may be entitled to receive.

STEAMER AVALON COMPANY.

By W. H. WOOD, (Seal)

President.

IRA S. LILLICK,

Proctor for Libelant. [8]

State of California,

City and County of San Francisco,—ss.

W. H. Wood, being first duly sworn, deposes and says, that he is an officer, to wit, the president of the libelant herein, Steamer Avalon Company; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and, as to those matters, that he believes it to be true.

W. H. WOOD.

Subscribed and sworn to before me this 1st day of August, A. D. 1916.

[Seal]

T. L. BALDWIN,

Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Filed Aug. 1, 1916. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [9]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD," Her Engines, Boilers, Machinery, Tackle, Furniture and Cargo,

Respondent.

Claim.

To the Honorable, the Judges of the District Court of the United States, in and for the Northern District of California:

The claim of Hubbard Steamship Company, a corporation, to the American steamer "General Hubbard," her tackle, apparel and furniture, now in the custody of the Marshal of the United States for the said Northern District of California, at the suit of Steamer Avalon Company, a corporation, libelant, alleges:

That it, the said Hubbard Steamship Company, is the true and bona fide owner of the said American steamer "General Hubbard," her tackle, apparel and furniture, and that no other person is owner thereof.

WHEREFORE this claimant prays that this Honorable Court will be pleased to decree a restitu-

tion of the said steamer "General Hubbard" to it, the said claimant, and otherwise right and justice to administer in the premises.

HUBBARD STEAMSHIP COMPANY,
By A. B. HAMMOND, (Seal)
Its President. [10]

Northern District of California,—ss.

Subscribed and sworn to before me this first day of August, A. D. 1916.

[Seal] THOMAS J. FRANKLIN,
Deputy Clerk United States District Court, Northern District of California.

IRA A. CAMPBELL,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant.

[Endorsed]: Filed Aug. 3, 1916. W. B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [11]

In the District Court of the United States, for the Northern District of California, First Division.

IN ADMIRALTY.—No. 16,075.

STEAMER AVALON COMPANY,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD," Her Engines, Boilers, Machinery, Tackle, Apparel, Furniture and Cargo,
Respondent,

HUBBARD STEAMSHIP COMPANY, a Corporation,

Claimant.

Answer.

The answer of Hubbard Steamship Company, a corporation, claimant herein, to the libel of Steamer Avalon Company, a corporation, libelant herein, admits, denied and alleges as follows:

I.

Claimant admits the allegations of article I of said libel.

II.

Claimant admits the allegations of article II of said libel.

III

Answering unto the allegations of article III of said libel, claimant is not sufficiently informed with respect thereto to either admit or deny the same, and for that reason demands that proof thereof be made if the same [12] be material.

IV.

Answering unto the allegations of article IV of said libel, claimant admits the same, except that portion alleging that said steamer "General Hubbard" was in distress, which allegation it denies. It admits, however, that at the time and place said steamer "General Hubbard" was in a disabled condition through the breaking of her crank-shaft.

V.

Answering unto the allegations of article V of said libel, claimant admits that said steamer "Avalon,"

on a voyage north to Willapa Harbor, Washington, and at a point about four miles off Cape Meares Lighthouse, perceived the steamer "General Hubbard," and then and there changed her course from her then voyage, and proceeded to the said "General Hubbard," and discovered the said steamer to be disabled, the crank-shaft of said "General Hubbard" being broken beyond temporary repair, but denies that said steamer "Avalon" perceived said steamer "General Hubbard" to be in any danger or showing distress signals, and denies that she was in any danger, or entirely disabled; admits, however, that signals for assistance were sent up. Claimant denies that at said time and place there was a heavy westerly swell, or that the wind freshened from the west, or that the steamer "Avalon" under difficulties made fast her lines or hawsers to the said steamer "General Hubbard" for the purpose of towing the said steamer "General Hubbard" to the port of Astoria; admits that the said steamer "Avalon" then proceeded to tow the said steamer "General Hubbard" [13] to Astoria, Oregon, but denies that on account of the strong currents at the Columbia River bar, or for any other cause, had great or any difficulty in so towing said steamer "General Hubbard," and denies that by reason of said strong currents, or for any other cause, the said vessels were laboring heavily, or at all, and denies that both of said vessels were, or that either of them was, at said place, or at any other place, in a perilous position. Admits that said vessels arrived at Astoria, Oregon, at 8:25 P. M. and not 10 P. M., as al-

leged, on Tuesday, July 25, 1916, and admits that at or about said time said steamer "General Hubbard" was anchored safely off or near Astoria, Oregon.

VI.

Answering unto the allegations of article VI of said libel, claimant admits that at the time and place thereinbefore mentioned, the master of the said "General Hubbard" informed the master of the "Avalon" that said steamer "General Hubbard" was disabled and unable to proceed without assistance, and that he requested the master of said steamer "Avalon" to tow said steamer "General Hubbard" to or near Astoria, Oregon; but denies that the master of said steamer "General Hubbard" informed the master of said steamer "Avalon" that said steamer "General Hubbard" was entirely disabled in the sense that she was in any danger, and denies that said arrangements between said masters was any other than a towage service, as shown by the agreement with respect to said towage subsequently entered into by said masters at Astoria on July 25, 1916, a copy of which agreement is hereto attached, marked exhibit "A," and hereby made a part of this answer. [14]

VII.

Claimant admits the allegations of article VII of said libel.

VIII.

Answering unto the allegations of article VIII of said libel, claimant denies that the value of the cargo in said "General Hubbard" at the time and place in

said libel mentioned was about \$25,000 or any sum in excess of \$16,123.68.

IX.

Claimant denies the allegations of article IX of said libel.

X.

Claimant denies the allegations of article X of said libel.

XI.

Answering unto the allegations of article XI of said libel, claimant denies that all and singular the premises are true, but admits that they are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Further answering unto the allegations of said libel, claimant alleges:

I.

That said steamer "General Hubbard" left the Columbia River at about the hour of six o'clock, P. M. on July 24, 1916, with a full cargo of lumber of the value of \$16,123.68, on a voyage to San Francisco, and at about midnight of said day, and while approximately fourteen miles [15] N. E. $\frac{1}{4}$ East from Cape Meares, in latitude $45^{\circ} 22' N.$, longitude $120^{\circ} 20' W.$, said steamer's crank-shaft broke, rendering her engine useless; that the master of said steamer immediately knew that, because of said accident, it would be necessary for his vessel to be towed to port for repairs, and, not being equipped with wireless, also knew that sooner or later he would have to advise the keeper of Cape Meares Lighthouse, or a passing vessel, of his need of tow-

age assistance, and have a tug or towing steamer sent to him to make such tow; that by reason of such situation, said master shot the usual rockets calling for assistance, in the first instance, to attract the attention of said lighthouse keeper, and very shortly thereafter said master observing inshore from said "General Hubbard" the lights from a passing vessel, thereupon, again shot rockets and displayed a searchlight, and, in response thereto, the steamer "Avalon," a moderate sized steam schooner, north bound, light, came up, and, on request of the master of the "General Hubbard," after an explanation of said steamer's condition, agreed to tow said "General Hubbard" to Astoria, with the understanding that the cost of the towage was to be settled by the owners amicably, or by arbitration, if necessary. Said steamer "Avalon," after getting her hawser ready, passed the same by means of the usual heaving lines to said "General Hubbard," and at 2:25 A. M. proceeded with said "General Hubbard" for Astoria; that said vessels entered the Columbia River at about 5 P. M., and arrived in Astoria at about 8:25 P. M., where said "General Hubbard" anchored, and said steamer "Avalon" thereupon continued to the oil wharf at Astoria. [16]

II.

That at the time said crank-shaft broke the night was starlight, and the wind a light northwesterly breeze, with a very moderate northwesterly swell; that during the following day said swell continued to moderate, and said light wind to flatten out, until almost absolute calm weather prevailed; that no sea

of any kind whatsoever was encountered at any time during said towage, and particularly was none encountered on the Columbia River bar, notwithstanding the fact that the tide was ebbing at the time said vessels crossed in; that it was the fairest season of the year for that region, and the place at which said "General Hubbard" became disabled was in the usual track of coasting vessels; that at no time was said "General Hubbard" in any danger whatsoever.

III.

That said services were but towage services, as to the compensation for which, the masters of said steamers entered into a written agreement on board said steamer "Avalon" at Astoria, a copy of which is hereto attached, marked exhibit "A," and hereby made a part of this answer.

IV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE claimant prays that the libel herein may be dismissed with costs, and that it may have such other and further relief as shall be deemed and equitable in the premises.

IRA A. CAMPBELL and

McCUTCHEM, OLNEY & WILLARD,

Proctors for Claimant. [17]

State of California,

City and County of San Francisco,—ss.

L. C. Stewart, being first duly sworn, deposes and says:

Witness:

(Signed) CHAS. A. KROHN, 2d Mate
"General Hubbard."

(Signed) J. L. CHRISTENSEN,
Master, S. S. "Avalon."

[Endorsed]: Service of the within answer and receipt of a copy is hereby admitted this 28th day of October, 1916.

IRA S. LILLICK,
Atty. for Libelant.

Filed Oct. 30, 1916. W. B. Maling, Clerk. By
C. W. Calbreath, Deputy Clerk. [19]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, etc.,

Respondent.

Amendment to Libel.

Now comes libelant above named, and, by leave of Court first had and obtained, files this, its amendment to the libel on file herein, and amends paragraph III thereof, by striking out "\$125,000," in line

6, of page 2 of said libel, and inserting in lieu thereof “\$200,000”; and,

Amends paragraph VII, lines 18 and 19, upon page 3 of said libel; by striking out the words and figures “Three Hundred Thousand (300,000),” and inserting in lieu thereof “*Four Hundred Sixty-five* (465,000)”; and,

Amends paragraph VIII of said libel by inserting, after the word “cargo,” upon line 21 of page 3 of said libel, the words “and freight.”

STEAMER AVALON COMPANY,

By R. A. HISCOX,

Secretary.

IRA S. LILLICK,

Proctor for Libelant. [20]

State of California,

City and County of San Francisco,—ss.

R. A. Hiscox, being first duly sworn, deposes and says; that he is an officer, to wit, the secretary, of the libelant herein; that he has read the foregoing amendment to the libel on file herein and knows the contents of said amendment; that the same is true of his own knowledge, except as to those matters which are therein stated on information, or belief, and, as to those matters, that he believes it to be true.

R. A. HISCOX.

Subscribed and sworn to before me this 24th day of March, A. D. 1917.

[Seal]

J. R. CORNELL,

Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed by Order of Court. March 26, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [21]

At a stated term of the District Court of the United States, for the Northern District of California, First Division, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Monday, the 26th day of March, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable MAURICE T. DOOLING, District Judge.

No. 16,075.

STEAMER AVALON COMPANY

vs.

Am. Stmr. "GENERAL HUBBARD," etc.

Minutes of Court—March 26, 1917—Trial.

(MINUTES OF TRIAL.)

This cause came on regularly this day for hearing of the issues herein. Ira S. Lillick, Esq., was present as proctor for and on behalf of libelant. Ira A. Campbell, Esq., was present as proctor for and on behalf of respondent. After hearing proctors, the Court ordered that the cause of J. L. Christensen, et al., vs. Hubbard Steamship Company, and Hammond Lumber Co., No. 16,110, be, and the same is hereby consolidated with this cause for further proceedings. Proctors for respective parties made their respective statements as to the nature of the actions herein. On motion of Mr. Lillick and over the

objection of Mr. Campbell, further ordered that libelants, be and are hereby allowed to file amendment to original libels herein. Mr. Lillick called W. S. Burnett, L. C. Stewart, R. A. Hiscox, Fred D. Parr and W. H. Wood, each of whom was duly sworn on behalf of libelants and examined, and introduced in evidence the depositions of Jens L. Christensen and Peter Rodland and certain exhibits, which were filed and marked Libelants' Exhibits Nos. 1 (Chart), and 2 (Agreement), and thereupon rested Libelant's cause. Mr. Campbell called R. A. Hiscox as a witness on behalf of respondents and A. F. Pillsbury, who was duly sworn [22] on behalf of respondents and examined, and introduced in evidence certain exhibits, which were filed and marked Respondents' Exhibits "A" (Report) and "B" (Agreement) and the depositions of Charles A. Watts, Gustaf W. Johnson and O. S. Wickland, and thereupon rested cause on behalf of respondents. After hearing said proctors, further ordered that this cause be submitted on briefs to be filed *in and fifteen fifteen days*. [23]

In the District Court of the United States in and for the Northern District of Californit, First Division.

STEAMER "AVALON" CO., a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD," Her Engines, Boilers, Machinery, Tackle, Apparel, Furniture and Cargo,
Respondent.

(Depositions of Jens L. Christensen and Peter Rodland.)

BE IT REMEMBERED, that on Monday, October 16, 1916, pursuant to stipulation of counsel hereunto annexed, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, personally *appeared me* Francis Krull, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Jens L. Christensen and Peter Rodland, witnesses called on behalf of the libelant.

Ira S. Lillick, Esq., appeared as proctor for the libelant and Ira A. Campbell, Esq., appeared as proctor for the respondent, and the said witnesses having been by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(IT IS HEREBY stipulated and agreed by and between the proctors for the respective parties that the depositions of the above-named witnesses may be taken *de bene esse* on behalf of libelant at the office of Ira S. Lillick, Esq., in the Kohl Building, in the City and County of San Francisco, State of California, on Monday, October 16, 1916, before Francis Krull, a [24] a United States Commissioner for the Northern District of California, and in shorthand by Edward W. Lehner.

It is further stipulated that the depositions, when written up, may be read in evidence by either party

on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived and that all objections as to the form of the questions are waived unless objected to at the time of taking said depositions, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived.) [25]

Deposition of Jens L. Christensen, for Libellant.

JENS L. CHRISTENSEN, called for the libellant, sworn.

Mr. LILLICK.—Q. Captain, what is your age?

A. Forty-one.

Q. How long have you been going to sea?

A. Going on 26 years.

Q. During that time what has been your experience? In what capacities have you served?

A. Well, I have served as master for the past 17 years—going on 17 years now.

Q. Before that time what were you?

A. First officer, second officer and third officer.

Q. You are now captain of the steamer "Avalon"? A. Yes.

Q. How long have you been captain of her?

A. Four years and 15 days.

Q. Were you on board in July, when the "Hubbard" was picked up by the "Avalon"? A. Yes.

Q. Will you tell us where you were and what happened?

(Deposition of Jens L. Christensen.)

A. I was about 14 miles west northwest of Cape Meares; about 12 o'clock or 20 minutes past 12 the first officer came and called me.

Q. You say he came and called you; where were you? A. I was asleep in my room.

Q. What did you do?

A. He told me there was a steamer up to westward sending up distress rockets and playing a searchlight up in the sky; so I told him to start out for her and I would be up on the bridge in a few minutes; when I got up on the bridge she was still playing the searchlight up; we were about 3½ miles aft when I got on the bridge.

Q. Then what did you do?

A. When I got up close to him I slowed the engine down and furthermore I stopped my ship and I hailed him.

Q. What did you say?

A. I says "Captain, what can I do for you?" [26] and he says "I am broke down; can you tow me to Astoria?" I says, "Why certainly"; I says, "I will try it."

Q. Then what did you do?

A. Then I went out to the west a little bit, got my hawser and things ready and started to pick him up, get him in tow.

Q. What was the condition of the weather, Captain?

A. The wind was west northwest, a northwest swell.

(Deposition of Jens L. Christensen.)

Q. How was the "Hubbard" lying with reference to the sea?

Mr. CAMPBELL.—There is no evidence yet that there was any sea?

A. She was lying headed about west southwest; she was lying right in the trough of the sea rolling.

Mr. CAMPBELL.—Q. What was the compass heading? A. West southwest.

Mr. LILLICK.—Q. What was the condition of the sea?

A. There was a moderate swell running, north-west swell.

Q. Was it northerly or northwesterly?

A. Northwesterly.

Q. Northwesterly swell? A. Yes.

Q. How was the "Hubbard" lying with reference to that northwesterly swell?

A. She was lying in the trough of the sea.

Q. What cargo did the "Hubbard" have on her?

A. Lumber.

Q. Was there anything on her deck?

A. Yes.

Q. What?

A. About 16 feet of deck load.

Q. Do you know from what you saw whether the "Hubbard" was able to keep her head up to the sea?

A. Not the way she was lying there; she was lying in the trough of the sea and she had no means, as her engine was disabled and there were no sails—

Q. Do you know that she had no sails?

(Deposition of Jens L. Christensen.)

A. No, I do not; there were none bent; there were none on the mast.

Q. How about the wind; was there any wind?

A. There was a light breeze, west northwesterly breeze.

Q. How did you make fast to her?

A. I went up alongside of her first and steamed up ahead a little bit and I stopped my engine [27] and I gradually let my ship drop astern until I got within 30 or 40 feet astern of him—my stern from his bow—and then I threw a heaving line to him.

Q. Whose heaving line did you use?

A. I used the "Avalon's" hawser.

Q. Then he made fast, did he? A. Yes.

Q. And you started off? A. Yes.

Q. Do you remember what time it was when you made fast, Captain?

A. It must have been somewhere around 1:30, I guess; I really do not remember that exactly.

Q. Do you remember the date?

A. I do not; I can look in the log-book and tell.

Q. By referring to the log-book can you refresh your recollection? A. Yes; the 25th of July.

Q. According to the log, how does that agree with your recollection as to the time you made fast?

A. It was 2:30 when we straightened out the line, when she was made fast; the time went a little faster when I was up on the bridge than I expected.

Q. You started off and proceeded to Astoria?

A. Yes.

(Deposition of Jens L. Christensen.)

Q. What was the character of the night; was it light or dark?

A. It was a dark night; the stars were shining but there was no moon.

Q. When did you arrive off the Columbia River bar?

A. The following evening about 4:30 I was at the bell buoy.

Q. Had you had any difficulty on the way up with the "Hubbard," Captain?

A. The biggest difficulty was at red buoy No. 4 right opposite the south jetty; we laid there for about half an hour, could not make an inch of head-way as there was no flood-tide; there was a heavy freshet in the river.

Q. The Columbia River was 22 feet above zero at that time, from normal; it was all run out and no run in. [28]

Q. How were your engines working at that time?

A. They were working full speed ahead all the time.

Q. Now, you say you laid there half an hour. What result, if any, did the water from the river have upon the "Hubbard"?

A. A strong tide running out.

Q. What effect did that have on the "Hubbard" as to setting her on to one side or the other?

A. It was *it* setting her southward all the time, toward the south jetty; I was heading up to the northward all the time; she was standing in that

(Deposition of Jens L. Christensen.)

direction from me; the "Hubbard" was shaping south toward the jetty.

Q. What if any danger was there connected with that particular part of the operation?

A. It would not have taken but very little and she would have gone on the south jetty, and she would have taken me with her.

Q. Did you have any cargo on board the "Avalon"?

A. No—I had a little merchandise, about 20 or 30 tons—I had nothing; coming from south she had nothing at all, no cargo.

Q. Now, you say you were there half an hour; when you finally picked up speed you went on through, did you? A. Yes.

Q. And proceeded up the river?

A. Yes.

Q. What time did she drop anchor?

A. 8:30 or 8:45; it was somewhere around that when I dropped anchor off Astoria.

Q. After you had dropped your line to the "Hubbard" what did you do with the "Avalon"?

A. We hove the hawser in then and I told the captain of the "Hubbard" I was going to Astoria, if he wanted to go up; he said, "Yes"; after we got the hawser in I went alongside the "Hubbard" and the captain came aboard my ship and we took him to Astoria.

Q. Did you have any conversation with the captain of the "Hubbard" after he had come on board the "Avalon"? A. Yes. [29]

(Deposition of Jens L. Christensen.)

Q. What was the conversation, and what did you do?

A. He signed this agreement and asked me to sign it, and I read it over carefully, and I says, "Captain, I do not see any reason why I should sign that." "Well," he says, "Captain,"—

Mr. CAMPBELL.—We object to all this; it is intended to vary the terms and conditions of a written agreement and the document speaks for itself.

Mr. LILLICK.—Q. Go on.

A. He says to me, "Well, if you think there is anything unreasonable about it you talk to your owners when you get to Willapa to-morrow and I will destroy mine and you destroy yours, and you telegraph if you think anything is wrong; but this is simply to say you have brought me to a safe anchorage."

Mr. CAMPBELL.—Is there any objection to this?

A. (Continuing.) He says, "It will be my own responsibility if the ship goes adrift now because you have brought me to a safe anchorage."

Mr. LILLICK.—Q. In speaking of this document you refer to the document I now hand you which is headed "Hubbard Steamship Company," and dated "July 25th, 1916"? A. Yes.

Q. That is your signature, Captain? A. Yes.

Mr. LILLICK.—We offer this in evidence and ask that it be marked Libelant's Exhibit 1.

(The letter is marked Libelant's Exhibit 1 and is as follows:)

**Libelant's Exhibit No. 1—Towage Agreement Dated
Astoria, Oregon, July 25, 1916, Chas. A. Watts
to Captain Christensen.**

HUBBARD STEAMSHIP COMPANY,
STEAMER "GENERAL HUBBARD."

At Astoria, Ore.,

July 25th, 1916.

c/o Capt. Christensen,
S. S. "Avalon,"
Astoria, Ore.

This is to certify that the Steamer "Avalon" Capt. Christensen has [30] towed my steamer the "General Hubbard" from a position viz: Cape Meares Light House N. E. $\frac{1}{4}$ E. approximate distance 14 miles Lat. $45^{\circ} 22'$ N. Long. $124^{\circ} 21'$ W. to anchorage off Astoria. Agreeing to leave the cost of towage to owners of both vessels to be settled amicably, or by arbitration if found necessary.

CHAS. A. WATTS,
Master "General Hubbard."

Witness:

CHAS. A. KROHN,
2d Mate "Gen. Hubbard."
J. L. CHRISTENSEN."

Cross-examination.

Mr. CAMPBELL.—Q. As I understand your statement it was that the "Avalon" did not have power enough in her engines to tow the "Hubbard" aganst this current which you got at what number buoy? A. No. 4 buoy.

(Deposition of Jens L. Christensen.)

Q. Is that it?

A. You know we used all the power we had.

Q. You understood the question, Captain; you say that the "Avalon" did not have power enough?

A. The current was so heavy.

Q. As a matter of fact, the "Avalon" did not have power enough to pull the "General Hubbard" even against the current that she met in the river at buoy No. 4?

A. No.

Q. The "Avalon" was light, was she not?

A. Yes.

Q. Her machinery is in the stern?

A. Amidships.

Q. How much water was she drawing?

A. 14 feet aft.

Q. How much forward? A. Seven.

Q. 7 feet forward? A. Yes.

Q. How long is she?

A. 196 feet on the keel.

Q. What is her beam? A. 41.

Q. And her depth?

A. 13-6, I think. I would not swear to that, but I think she is; I think the wheel is 9 feet 6, if I ain't [31] mistaken, the propeller.

Q. Where is the bridge-log?

A. That is on board the ship; it is not here.

Q. Is this a true copy of the bridge-log?

A. That is a true copy of the bridge-log.

Mr. CAMPBELL.—I should like to offer the entries of the log in evidence as part of the cross-

(Deposition of Jens L. Christensen.)

examination. I have no special desire to have the log itself go in evidence.

The following are the entries in the mate's log: "July 25, 1916: 12:30 A. M. sighted a steamer in distress; turned around and went to her assistance; 1:15 A. M. alongside steamer 'General Hubbard'; 2:30 A. M. took her in tow to Astoria; 3 A. M. full speed; pilot-house compass north northwest, bridge compass north, northwest, $\frac{1}{2}$ west; moderate northwest wind, clear; northwest swell; 8 A. M. full speed; pilot-house compass northwest by north $\frac{1}{2}$ north; bridge compass north northwest; moderate northwest wind, clear weather, northwest swell. 11:45, Tillamook Rock 4 points abeam; pilot-house compass northwest by north; bridge compass northwest by north $\frac{1}{2}$ north.

Lt. moderate westerly wind, clear weather, north-westerly swell.

3:35 P. M. Columbia Bar; South Channel, bell buoy abeam.

8:20 P. M. dropped the 'General Hubbard' to anchor at Astoria.

9:20 P. M. docked at Union Oil Company dock for fuel oil.

10 P. M. commenced taking on oil.

10:30 finished taking oil."

Redirect Examination.

Mr. LILLICK.—Q. Captain, when the "Avalon" was proceeding toward the "Hubbard" after you had gotten up on the bridge were any other vessels in the vicinity,—do you know?

(Deposition of Jens L. Christensen.)

A. I saw one inside of me. [32]

Q. How far inside of you?

A. About 5 miles.

Q. Do you know what she was? A. No.

Q. Do you know whether or not she could see the signals that you had seen from the "Hubbard"?

A. I don't know; she did not come to us at all; in fact he was playing the searchlight up in the sky all the time.

Q. Have you any idea what the other vessel was?

A. No.

Q. What danger was there to the "Hubbard," Captain, before you got your hawser on her?

A. There was no danger except as I say, if a northwesterly gale of wind came up and she would drop her deckload and fill up with water; of course she was 14 miles from shore; and we must admit the fact that there was plenty of water to drift; she was 14 miles off shore.

Q. What effect if any would the swell have had upon her if it had increased in violence?

Mr. CAMPBELL.—As he said it would cause her to lose her deckload.

A. If she lost her deckload she might have filled up with water; that is the only thing that would have happened to her.

Mr. LILLICK.—Q. Now, as to the power of the "Avalon" do you know what her engine-power is?

A. It is 575, I think, registered, if I am not mistaken—575 horse-power; I really don't know that, to tell the truth.

[**Deposition of Peter Rodland, for Libelant.**]

PETER RODLAND, called for the libelant, sworn.

Mr. LILLICK.—Q. Mr. Rodland, what is your occupation? A. Marine engineer.

Q. How long have you been a marine engineer?

A. Since 1895.

Q. Were the chief engineer on the steamer “Avallon” when she picked up the “Hubbard” at sea?

A. Yes. [33]

Q. What time was it,—do you remember?

A. It is there in the log-book, July 25, 1:20 A. M.

Q. Where were you when the distress signals of the “Hubbard” were seen?

A. I was in bed at the time; it was my watch off.

Q. Your watch off? A. Yes.

Q. Were you called?

A. I waked up as soon as the engine stopped, and came out.

Q. When were the engines stopped, do you remember? A. 1:20.

Q. Was that when you got up to the “Hubbard”?

A. No, this was 1:20, when we sighted her.

Q. The engines were stopped when you sighted her? A. Yes.

Q. Then you proceeded to the “Hubbard”?

A. Yes.

Q. Did you go on deck while they were maneuvering to get the line on board? A. Yes.

Q. Then you took her in tow and started off for Astoria? A. Yes.

(Deposition of Peter Rodland.)

Q. Do you remember when the vessel arrived at the Columbia River bar?

A. Yes; it was about half-past 5, I think, that we arrived there—or a little before 5.

Q. What was the condition of the bar?

A. There was a strong freshet running.

Q. Did you have any difficulty in getting in?

A. Yes, it took us quite a time getting over the bar.

Q. Why?

A. Because the current was too strong.

Q. What power engines has the "Avalon"?

A. 625.

Q. 625 horse-power? A. Yes.

Q. Do you remember when the "Avalon" came up to the "Hubbard" after you saw her distress signals, how the "Hubbard" was lying in the sea?

A. Yes, she was lying in the trough.

Q. How high was her deckload, do you remember?

A. She had about a 15-foot deckload, I guess; something like [34] that—16 feet.

Q. What danger, if any, was there connected with the "Hubbard's" position then?

Mr. CAMPBELL.—We object to this; this man is not a navigator, but an engineer, and not qualified.

A. Well, if she had stayed there she would eventually have drifted ashore; there was a northwest wind and sea setting her in shore; if it should blow she might roll, lying in the trough like that and lose her deckload over.

(Deposition of Peter Rodland.)

Q. To lose her deckload her stanchions would have to have broken? A. Yes.

Q. Did you pass any other vessels on the way up to Astoria after you got your line on the "Hubbard"?

A. Not that I saw except there was one steamer inside of us, when we maneuvered to get a hawser on board—inside of us.

Q. Were you with the captain when he and the captain of the "Hubbard" signed the document with reference to the service?

A. No. I met them shortly afterwards ashore; I went up town to get a paper and met them shortly afterwards.

Q. How many members of the crew are there on the "Avalon"?

A. There were 23, all told—22 or 23.

Q. And there were that many at the time this service was performed? A. Yes.

Q. How did the "Avalon" and the "Hubbard" compare in size?

A. The "Hubbard" is much larger.

Q. The "Hubbard" is much larger? A. Yes.

Cross-examination.

Mr. CAMPBELL.—I would like to offer these entries in the log-book: 12:40, found Steamer "General Hubbard" in distress at 1:20 A. M.; worked engines to bells in maneuvering around her. Got hawser on board and commenced towing at 2:50 A. M.; full speed [35] 5 minutes past 3; crossed in over bar at 5:30 P. M.; towed the "General Hub-

(Deposition of Peter Rodland.)

bard" to anchorage; stand by to 7 minutes past 8; half speed 8 minutes past 8 and stop 8:14; then she anchored. A. Yes.

Q. Then you lifted up and went up to Astoria?

A. We took the captain off and went up to Astoria.

Q. Those are the entries from the engineer's log-book under date of July 25, 1916? A. Yes.

Redirect Examination.

Mr. LILLICK.—Q. I notice in your log-book, "Found steamer 'General Hubbard' in distress at 1:20 A. M.," and in the mate's log that she was sighted at 12:30 A. M. Which is the correct time?

A. I am down below, and I don't know anything about that; I only refer to the bells we get, when we get a bell from the bridge.

Q. So that the item, "Found 'General Hubbard' in distress at 1:20 A. M.," states the time at which your engines were worked and maneuvered to get the hawser on board? A. Yes. [36]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel hereunto annexed, on Monday, October 16, 1916, before me, Francis Krull, a United States Commissioner for the Northern District of California, at San Francisco, at the office of Ira S. Lillick, Esq., in the Kohl Building, in the city and county of San Francisco, State of California, personally appeared Jens L. Christensen and Peter Rodland, witnesses

called on behalf of the libelant in the cause entitled in the caption hereof, and Ira S. Lillick, Esq., appeared as proctor for the libelant and Ira A. Campbell, Esq., appeared as proctor for the respondent; and that the said witnesses being by me first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in said cause, deposed and said as appears by their depositions hereunto annexed.

I further certify that the said depositions were then and there taken down in shorthand notes by Edward W. Lehner and thereafter reduced to type-writing; and I further certify that by stipulation of the proctors for the respective parties, the reading over of the depositions to the witnesses and the signing thereof was expressly waived.

And I do further certify that I have retained the said depositions in my possession for the purpose of delivering the same with my own hands to the Clerk of the United States District Court for the Northern District of California, the court for whom the same were taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in the said depositions and [37] caption named, nor in any way interested in the event of the trial named in said caption.

IN WITNESS WHEREOF I have hereunto set my hand at my office aforesaid, this 26th day of March, 1917.

[Seal] FRANCIS KRULL,
United States Commissioner, Northern District of
California, at San Francisco.

[Endorsed]: Filed Mar. 26, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [38]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle,
etc.,

Respondent.

(Deposition of Gustaf W. Johnson.)

BE IT REMEMBERED, That on Friday, November 24, 1916, pursuant to stipulation of counsel hereunto annexed, at the office of McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, personally appeared before me, Thomas B. Hayden, a United States Commissioner for the Northern District of California, authorized to take acknowledgments of bail and affidavits, etc., Gustaf W. Johnson, a witness called on behalf of the respondent.

Ira S. Lillick, Esq., appeared as proctor for libelant and Ira A. Campbell, Esq., appeared as proctor for respondent, and the said witness having been by me first duly cautioned and sworn to testify

the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of the respondent, at [39] the offices of McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Friday, November 24, 1916, before Thomas B. Hayden, a United States Commissioner for the Northern District of California, and in shorthand by Wm. H. Barnum.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof is hereby expressly waived.) [40]

GUSTAF W. JOHNSON, called for respondent, sworn.

Mr. CAMPBELL.—Q. State your full name.

A. Gustaf Waldamer Johnson.

(Deposition of Gustaf W. Johnson.)

Q. What is your business? A. Seafaring.

Q. What papers do you hold?

A. I hold a master's license for any ocean, at the present time.

Q. Were you chief officer of the steamer "General Hubbard" on July 25, 1916, at the time she was towed in the Columbia River by the "Avalon"?

A. Yes, sir.

Q. Were you on watch at the time the "Hubbard" broke down? A. No, sir.

Q. What was the first that you knew that she had become disabled?

A. I happened to wake up, when she shut down about 20 minutes to 12, I should judge; no, about 11 o'clock the first time, the first bell; a quarter to twelve she slowed down for good. We found out she was broke down. I was called out to get the line ready, and I got the towing line ready.

Q. When you came on deck were the lights of the steamer "Avalon" in sight?

A. Yes; we could barely see her headlight, because it was a dark night. You can see quite a ways off, one of those headlights is supposed to show about five miles; sometimes you can see them 6 or 7 miles, on a clear night.

Q. Was it cloudy or starlight?

A. The stars was all up. It was fine and clear. You could see Cape Meares, as plain as you can see.

Q. At the time that you saw the "Avalon's" lights was she heading towards you?

A. Yes, she was headed up north; she was on the

(Deposition of Gustaf W. Johnson.)

coast going north; she was pointed for Willapa Harbor. She found we was [41] in distress, and she altered her course a point or so, and hollered to us to know what was the matter.

Q. Where were you when she reached the vicinity of the "Hubbard"—where were you personally on board the boat?

A. When she sent up distress signals?

Q. No, when the "Avalon" came up?

A. I was right in the fore-castle-head, and had everything ready; all of the crew were called out.

Q. Who was it that had charge of the sending up of the distress signals?

A. The captain was on the bridge; the second officer, Mr. Crone, carried out his orders.

Q. Did you have anything to do with sending up distress signals yourself?

A. No, sir; I had my hands full with the rope.

Q. What did you do on the fore-castle-head?

A. I was standing up and had my heaving rope; I had a big hawser and running lines ready to give to the "Avalon." We didn't know whether she had any towing rope or not, so we got our own ready in the meantime. When she came up she said she had a rope, so we said, "All right, use yours if you think it is better; otherwise we can use ours."

Q. Was the hawser passed by means of the heaving line?

A. Yes, sir, the chief officer or second officer,—I don't know one from the other—he threw us a heaving line; the first one missed. We threw them one,

(Deposition of Gustaf W. Johnson.)

and that one missed; they threw us one, that missed; we threw the fourth one to them and they got it.

Q. Where was the "Avalon" at that time, ahead of you or to one side of you?

A. She was just about ahead of us, just a little on the port bow.

Q. When the heaving line was passed, how did you haul your hawser aboard? [42]

A. We tied on the 3-inch manila line, and we hauled that line aboard the "Hubbard," and started to use the windlass until we got his hawser; it only took about 10 or 15 minutes, and the whole thing was fast after we got it aboard.

Q. What was the condition of the surface of the water all of this time?

A. It was a smooth sea and light swell.

Q. What effect, if any, did the swell have on the "General Hubbard"?

A. It did not have any effect; she was as steady as she could be.

Q. Was the swell sufficient to cause the "Hubbard" to roll?

A. No, sir; she never moved; she was loaded and a loaded vessel never moves in weather like that.

Q. How did she lay with respect to the swells?

A. About aside to the swells.

Q. After the hawser was made fast, what was done?

A. We gave them the signal that the rope was all fast, then, of course, she proceeded to hold while the "Avalon" made fast; when she had her rope made

(Deposition of Gustaf W. Johnson.)

fast, and was certain she had enough rope then she went full speed and proceeded to Astoria.

Q. What time did you arrive, approximately, at the entrance to the Columbia River?

A. I don't exactly remember; I think it was somewhere about a quarter after four, in the afternoon.

Q. In the afternoon?

A. Yes, sir; in the afternoon.

Q. What kind of weather had you had all the rest of the night, and during the day of the 26th?

A. We had fine weather all the way; clear sky and light wind, northwest; a little swell, nothing to speak of; little rollers once in a while.

Q. Little rollers coming down?

A. Nothing to speak of. Not enough to stop us, or enough to make any disturbance, or roll the [43] ship or anything of that kind.

Q. When you got into the Columbia River how was the tide in the river running?

A. The tide was ebbing a little.

Q. How was the current of the river?

A. The current was against us; when the tide ebbs, the current runs out.

Q. What headway did the "Avalon" make with the "Hubbard" against the tide and the current?

A. About 3 miles an hour, I should judge.

Q. It has been testified by the captain of the "Avalon" that the current in the river when you were opposite the end of the jetty set the "Hubbard" over to one side, to the southward, toward the jetty, and that he all the time was heading up to

(Deposition of Gustaf W. Johnson.)

the northward; I will ask you whether or not that is true?

A. No, sir; we followed him right along; and the way he done it,—he was not very much acquainted around with the river, so he followed the black buoys.

Q. On which side of the river?

A. On the left.

Q. On the north side? A. Yes, sir.

Q. What is the general direction of the river down there?

A. I forget the coast now. It is a straight coast until you get up to buoy No. 14.

Q. Generally, is it east and west, or north and south?

A. No, it is east and west. I will tell you a little closer, northeast by east, take it right through up there.

Q. Were you at any time headed across the river so that the "Avalon" was headed to the northward and you were tailing to the southeast?

A. No, sir; we followed her tow line; that is all we could do in fact; we could only steer after her.

Q. At any time while you were entering the river or in the river were the swells ever setting you over towards the south jetty? A. No, sir. [44]

Q. Was there ever at any time, before or after entering the river, or while in the river, any time that your steamer was in any danger whatsoever of drifting over out the south jetty? A. No, sir.

Q. What was the condition of the surface of the water on the Columbia River bar?

(Deposition of Gustaf W. Johnson.)

A. It was smooth, smooth as it could be; no swell on it at all; nothing at all.

Q. If there had been any danger in entering the river at the time that you did, what would you say as proper place for anchoring outside until the tide was right?

A. It was fine there. You could drop anchor any place by the pilot buoy or the whistling buoy.

Q. What can you say as to vessels customarily anchoring there?

A. Between the whistling buoy and the pilot buoy is a good place to anchor, when you could not go in on account of thick fog.

Q. Were there any pilot buoys outside when you were up there?

A. I don't remember; I think there was one, if I am not mistaken. I think there was a pilot buoy laying there at the time.

Q. At any time while the "Hubbard" was in tow of the "Avalon," either on the open sea or in the river did she sheer or veer from side to side?

A. No, sir; she might take a slight sheer once in a while. No vessel towed by a tug,—it makes no difference—I don't care whether it is smooth or rough, she is bound to make a little sheer, about a half a point to either side.

Q. Aside from that kind of sheering was there any amount of sheering on the part of the "General Hubbard" at any time? A. No, not a thing.

Q. It is alleged in the libel filed here that the two vessels labored heavily on account of the strong

(Deposition of Gustaf W. Johnson.)

current out of the Columbia bar: is that true, or not true.

A. No; it is absolutely not true. [45] I didn't see any laboring there. There could not be any laboring, there was no rough sea there. A man with any common sense would not contemplate to tow a vessel in over the bar if it was rough. The only thing we had there was a little ebb tide against us, so we could not make the headway the same as we could any other time. It was smooth; a fine, lovely, nice evening; cloudy sky, that is all, as far as I know.

Cross-examination.

Mr. LILLICK.—Q. How long have you been going to sea? A. Well, about twenty-two years.

Q. On this coast or on the other coast?

A. No, I should judge I have been 16 or 17 years on this coast.

Q. On lumber schooners most of the time.

A. Once in a while I ran to Australia, all over the world, and to Europe.

Q. You have been running on this coast during this 16 years?

A. I have been running to Australia and over to the Orient.

Q. How many trips have you made up and down the coast? A. I don't know, sir.

Q. Approximately, how many?

A. I cannot tell you.

Q. Twenty? A. About twenty times over.

Q. Twenty times twenty: 400, you say?

(Deposition of Gustaf W. Johnson.)

A. I could not tell you.

Q. How long have you been on the "Hubbard"?

A. About two and a half years.

Q. She was running between what ports while you were on her?

A. Columbia River and San Pedro, Gray's Harbor and San Pedro, for 7, 8 or 9 months, when I was on her.

Q. The "Hubbard" has been sold, hasn't she?

A. Yes, she has a Norwegian flag over her stern; she was sold about two months ago.

Q. Are you still working for the Hammond Lumber Company?

A. I don't know; I am paid off. [46]

Q. How long ago were you paid off?

A. About eight weeks ago.

Q. Were you standing by here?

A. No; I have been up for a master's license in the meantime. I don't care if the Hammond Lumber Company gives me another job or not; if it does all well and good.

Q. There had been a storm a few days before this, up there?

A. Probably had a little blow, I don't know.

Q. That evening as you were coming down I think you said a little while ago the sky was cloudy?

A. Yes, sir, a cloudy sky.

Q. That was the night of the storm that they had?

Mr. CAMPBELL.—The day he refers to.

Q. You say the evening?

A. Some evenings you have cloudy skies; you may

(Deposition of Gustaf W. Johnson.)

if you are going to have a gale of wind, and it may be clear for a while.

Mr. LILLICK.—Q. Then a gale would come up in a couple of hours?

A. No, it all depends.

Q. Isn't that Washington and Oregon coast a stormy coast? A. Not in the summer.

Q. Doesn't a gale come up in two or three hours?

A. Not in the summer-time; in the winter-time you can expect it.

Q. Don't they have storms in May and June?

A. They have strong north winds.

Q. Stronger winds in May than in the winter months? A. Sometime they have.

Q. Then those winds come up very quickly?

A. No; you take a westerly wind, it may blow for about two or three days; when it comes quickly it figures back to north or northwest.

Q. When these gales come up they come up within two or three hours?

A. It takes longer than that.

Q. Have you not been off the Oregon and Washington coast when a [47] gale comes up with a couple of hours?

A. I have been off the coast when we had a strong wind from the southwest.

Q. Have you not been off the Oregon and Washington coast when a gale came from the southeast; that is, winters sometimes, and sometimes in May and June?

A. Southeasterly winds,—in the months of May

(Deposition of Gustaf W. Johnson.)

and June, it is fine weather.

Q. You have been on this coast in May and June?

A. More or less, up and down, lots of times.

Q. Is it not a fact that in May and June they sometimes have storms of greater violence than they have even in the winter?

A. I didn't see it that way.

Q. That is not your experience?

A. The only time I am afraid of any heavy weather is in the winter.

Q. I am not speaking of the weather in the winter; I am speaking of the weather off the Washington and Oregon coast in the summer; they have very heavy wind storms, do they not in the summer? A. Sometimes.

Q. You say sometimes?

A. No, in the summer months you have north wind; that is just what you have, north wind, moderate north wind; it may blow a strong wind; you don't exactly have any gale. In the fall of the year you will have westerly winds and southwest. In the winter you may have a strong southwestern, once in a while and heavy gale; that is just the kind of weather you have.

Q. Have you not in your experience in the summer months sometimes had very heavy gales?

A. No, I never have.

Q. You have never had a heavy gale in the summer months off the Oregon and Washington coast?

A. No, sir; strong, fresh, northwest wind.

Q. How many knots an hour do you call a strong, fresh northwest wind? [48]

(Deposition of Gustaf W. Johnson.)

A. If you take it by the Beaufort scale, number 7.

Q. Number 7 is how many knots an hour?

A. You can figure that out; it would be easy to figure it out.

Q. Which is No. 7 of the Beaufort scale?

A. The wind runs from one up to twelve. I would not call it a gale.

Q. What is one knot an hour?

A. Light air.

Q. What is No. 2?

A. No. 2 is light; No. 3 is light; 4 and 5 is moderate; 6 and 7 is strong or fresh; six is fresh, seven is strong; eight and nine up to ten and eleven is a gale; and twelve is a hurricane.

Q. Let's go back to that No. 7; how many knots an hour is No. 7 on the Beaufort scale?

A. I should judge about, maybe about, say, about 20 miles an hour.

Q. You say that you have never known wind of more than No. 7 violence in the summer off the Oregon and Washington coast?

A. No, I never knew of any. I might be down south when they had a wind storm up there and read about it in the newspapers. I never had any experience up there in the summer.

Q. Then you have never known in your experience off the Washington and Oregon coast of a wind storm of greater violence than twenty miles an hour when you have been going up this coast during the sixteen years you have?

A. No, sir; I have never been caught in anything stronger than that.

(Deposition of Gustaf W. Johnson.)

Q. You have never been in wind of a greater violence than twenty miles an hour off the Washington and Oregon coast? A. No, not in that direction.

Q. From what other direction would they come?

A. We are talking about the summer months; there is only one kind of wind in the summer. [49]

Q. That is what kind of wind? A. Northern.

Q. Let us take that kind of a wind: You have never during the sixteen years you have been to sea on this coast been in a wind of greater violence than 20 knots an hour off the Washington and Oregon coast? A. No, sir.

Q. How long were you on the "Hubbard"—about two years and a half, you say?

A. Yes, sir, about. I cannot tell you to the minute or hour. I can tell you about. It may be only two years and three months. I was on the "George W. Fenwick" previous to that.

Q. This is your writing in the log-book which Mr. Campbell has just handed to me (showing witness book)?

A. Yes, that is the "Hubbard's" log-book. Yes, that is my writing (after examining book).

Q. How often did you write this up?

A. Every day, as we go along; whenever I had time, when I got through in the evening, afternoon, or any time.

Q. I call your attention to Saturday, July 15, 1916, and ask you when you wrote up that page?

Mr. CAMPBELL.—What day is this?

Mr. LILLICK.—July 15, 1916.

(Deposition of Gustaf W. Johnson.)

Mr. CAMPBELL.—That is 10 days before the accident. I object to the materiality of that.

Mr. LILLICK.—Q. Do you know whether you wrote that up on July 15, 1916?

A. I could not swear to it.

Q. Do you know if you wrote it a week afterwards—what is your best recollection as to when you wrote that up? A. We keep a scrap log-book.

Q. When did you write the entry on that day?

Mr. CAMPBELL.—We object to the question as being absurd [50] upon its face; as four months afterwards he cannot tell when he wrote a particular entry.

The WITNESS.—When I have time—

Mr. LILLICK.—Q. What is your best recollection as to when you wrote up the entries of the log-book for July 15, 1916?

A. I wrote it on Saturday, I should judge.

Q. On Saturday, July 15th? A. Yes, sir.

Q. And the entries on Sunday, July 16th?

A. I wrote them on Sunday; the one on Monday, I followed suit.

Q. And on Monday you wrote up the entries appearing on Monday, July 18th? A. Yes, sir.

Q. And the following Tuesday, when did you write up that?

A. The same day; whenever I have a chance in the evening or afternoon I would start to write this up.

Q. So that you wrote this up from day to day?

A. Yes, sir.

Q. Why did you get a new log-book?

(Deposition of Gustaf W. Johnson.)

A. Because this log-book was called for.

Q. Do you remember when this log-book was called for? A. No, I don't know.

Q. I notice that you stopped writing up this log-book on the second day of August? A. Yes, sir.

Q. Do you know whether or not the log-book was called for on the second day of August?

A. I don't know, sir.

Q. You only know that you wrote up no more entries in this log-book?

A. The captain told me he wanted that log-book; I gave it to him.

Q. At the same time you wrote all of these entries after the captain asked you to let him have the log-book?

A. No, I didn't. I don't know what you mean, in fact. [51]

Q. I mean this: Mr. Johnson, after the captain had told you he wanted the log-book you wrote these entries all up?

A. I understand, there is something there you want to get, and I want to give it to you. You want to know if I wrote my log-book every day? I did it every day, when convenient.

Q. Then when you told me a little while ago that you wrote up the entries in the log-book on the first pages, Saturday, July 15, 1916, you want me to understand that you now wish to answer that you may not have written it on that day?

A. No; I simply put down in the evening—Wednesday, so and so, August 2d, crew resumed

(Deposition of Gustaf W. Johnson.)

chipping and painting—I knew we had to do that. Furthermore, I don't know why that is the way I put it down. The captain asked me for the log-book.

Q. You said a minute or two ago that you wrote up this log-book when you had time to do it. Do you want to change your testimony that you gave that you wrote up these entries that appear on the first page on Saturday?

A. No, sir, I don't want to change it. I wrote it up as I go along.

Mr. LILLICK.—We call upon the claimant to give us the log-book in which the entries for Friday, July 14, 1916, appear.

Mr. CAMPBELL.—That has already been presented to you.

Mr. LILLICK.—I mean the log-book which is the log made up from the scratch log, which has the entries for Friday, July 14th.

Mr. CAMPBELL.—I tender you the book of original entry.

Mr. LILLICK.—I desire to see the book and find out whether or not this log-book that has been presented is a log-book that Mr. Johnson made up from another log-book, and started on July 15th, but copied from another log-book; that is the purpose of it.

Mr. CAMPBELL.—Compare them with the bridge log.

Mr. LILLICK.—Let the record show that the libelant has made [52] a demand upon the claim-

(Deposition of Gustaf W. Johnson.)

ant for the log-book of the steamer "General Hubbard" on Voyage No. 92, from San Francisco towards the Columbia River, containing the entries for Friday, July 14, 1916, for the reason that the libelant desires to compare that log-book with the log-book that has been presented to see whether the log-book that has been presented is a copy of another log-book covering not only Friday, July 14th, but the subsequent days, and from July 16th up to and including Wednesday, August 2, 1916.

Mr. CAMPBELL.—I don't know whether that can be done or not. The steamer has gone foreign, and it may be that the log-books are on board. We again tender you the original log of entry, with the bridge log, which you can compare.

Mr. LILLICK.—I do not want to insinuate—but I do insinuate that another log-book for the steamer "General Hubbard" towards Columbia River from San Francisco, containing these entries is in existence; and it seems to me peculiar that these particular entries should be in another log-book, and then the entries stop on the day of this tow.

Mr. CAMPBELL.—The entries do not stop on the day of the tow. I would like to know what is the basis of that insinuation.

Mr. LILLICK.—The basis of the insinuation is that the entries here on July 15, 16, and 18th—I may be wrong—bear upon the face of this log-book the evidences of having been copied from something else, and that this log-book is not the log-book of

(Deposition of Gustaf W. Johnson.)

this vessel that was made up by the officers at that time.

Mr. CAMPBELL.—What is there on the face that leads you to make this insinuation that you say you are doing?

Mr. LILLICK.—The first few pages of this log-book are not mussed up in any way. In the "Remarks" appears the date, Monday, July 18th, and on the following page, Tuesday, July 18th, 1916. [53]

Mr. CAMPBELL.—Just read on. What is the date given for Wednesday?

Mr. LILLICK.—July 19, 1916—shall I go on—and Friday, July 21, 1916.

Mr. CAMPBELL.—It is all Greek to me. What are you driving at? Are you insinuating that I have done something—what is it?

Mr. LILLICK.—I am very sure you haven't, Mr. Campbell; I am sure about that. It is an insinuation against the employers who furnished this log-book to you.

Mr. CAMPBELL.—The employees did not furnish it to me; the company furnished it.

Mr. LILLICK.—Q. Where were your quarters, the sleeping quarters, on the "Hubbard," Mr. Johnson? A. On the after deck, on the starboard side.

Q. Do you remember what time it was when you got up on deck?

A. Somewheres about twelve o'clock.

Q. You did not look at your watch?

A. No, I was called out at one bell, at 10 minutes

(Deposition of Gustaf W. Johnson.)

to twelve; I got on deck just five minutes afterwards.

Q. Do you mean one bell?

A. One bell signifies that the watch is going to be called out.

Q. How long did it take you to get up on deck?

A. About five minutes, I should judge.

Q. The lights of the "Avalon" were in sight when you got on deck?

A. Yes, I could just about see there was something going; she was steaming up.

Q. Did you see any other lights except the lights of the lighthouse?

A. Yes, two or three more steamers. [54]

Q. Going what direction?

A. Two bound south.

Q. You saw them at the same time you saw the "Avalon's" lights?

A. No, I seen the "Avalon" first.

Q. When did you see these others? I asked you when you came on deck whether you saw other lights, and you said you saw the lights of two other vessels? A. That was afterwards.

Q. How long afterwards?

A. Maybe ten minutes afterwards.

Q. Where was the "Avalon" then?

A. Still steaming to sea.

Q. Did the other vessels go on their way?

A. One came up to us; when she seen the "Avalon" there she did not venture to hail us.

Q. Do you know what vessel it was?

(Deposition of Gustaf W. Johnson.)

A. No, I could not tell you, sir.

Q. What distress signals did you have out?

A. Skyrockets.

Q. What else? A. Searchlight.

Q. Do you know how many skyrockets were sent up? A. I don't know, sir.

Q. Were any sent out after you came on deck?

A. Probably one or two; I was busy working.

Q. Did you see one or two?

A. I heard some noise; I heard something; I didn't see it; most of them were sent up before I came on deck.

Q. Did you hear the noise of the first ones being set off?

A. I was asleep when the first ones were sent up; I didn't hear much about them, I don't think.

Q. After you had awakened at one bell, and before you got on deck, did you hear any other sent up?

A. I am not positive; but I believe they sent one up.

Q. One up? A. Yes, sir.

Q. Do you remember whether or not that while you were loading at Astoria, the Columbia River was in freshet?

A. When we were loading? [55]

Q. Yes? A. What do you mean by that?

Q. That the Columbia River was high, and that there was an unusual amount of water in the river?

A. No, I didn't pay much attention to that at all, because we were loading in different places, you can't tell. I didn't see any difference from any

(Deposition of Gustaf W. Johnson.)

other times when I was there. I don't know anything about that.

Mr. CAMPBELL.—Would a freshet increase the height of the water in the river?

Mr. LILLICK.—I am not prepared to say.

Mr. CAMPBELL.—I was wondering if a freshet of water would be controlled by the freshet in the river or by the Pacific Ocean.

Mr. LILLICK.—You probably know more about that than I do.

Q. It had been raining, had it not, at Astoria while you were there loading?

A. I don't remember. I cannot tell you. The log-book will probably tell you. I cannot keep all those things in my mind.

Q. Do you remember, independent of the log-book, that when the vessel was passing out on July 25, 1916 it was raining?

A. I don't remember; probably there had been a little drizzling rain. It is more than I know just now; otherwise the weather was fine when we passed out.

Q. There was a following sea when you passed out, was there not?

A. There was a little sea on probably, it all depends.

Q. What is your best recollection of the sea?

A. It was a moderate sea.

Q. That sea continued, did it not, while you were going on out and down? A. No, sir.

Q. When did it stop, if it did stop?

(Deposition of Gustaf W. Johnson.)

A. The sea simply smoothed down. There was no sea on at all during the evening, about 8 [56] o'clock when I went on the bridge. There was little sea on at 5 or 6 o'clock, but it was moderate. During the night the sea was absolutely gone; little swell on.

Q. I call your attention to the entry at 8 o'clock on Tuesday, July 25, 1916: "Following small sea; same very moderate"; do you remember that?

A. A small sea, that means just a little bit.

Q. It would not be in the log-book if there was not a sea of such a character to warrant your putting it in the log-book?

A. A small sea means that it is almost smooth; little light winds. A sea sometimes might be as big as a ship, and sometimes it might not be any higher than this table.

Q. This table is about 2½ feet high, isn't it?

A. Yes, sir.

Q. What character of a sea is it that calls upon you to enter it upon the log-book?

A. A small sea, that is almost smooth.

Q. You make the entries in the log-book of a sea that is, as you call it, almost smooth?

A. A light winded small sea; there could not be no heavy sea in light wind; it can be a swell; a little swell on probably—that stands to reason.

Q. I notice in your log-book for Friday, July 28, 1916, at 12 o'clock, P. M. "Fresh northwest wind, clear and following sea"; now, speaking from what you enter in your log-book, there was a difference

(Deposition of Gustaf W. Johnson.)

between the following sea that you have marked there as "a following sea" and the one that you entered upon the log-book for July 25, 1916, at 8 o'clock A. M. "following small sea"?

Mr. CAMPBELL.—I will ask counsel to show the witness the log-book.

Mr. LILLICK.—I have done so.

Mr. CAMPBELL.—Q. Do you understand the question?

The WITNESS.—No, I don't know what you mean.

Mr. LILLICK.—Repeat the question. [57]

(Question repeated by reporter as follows: "I notice in your log-book for Friday, July 18, 1916, at 12 o'clock P. M. 'Fresh northwest wind, clear and following sea'; now, speaking from what you enter in your log-book, there was a difference between the following sea that you have marked there as a 'following sea' and the one that you entered upon the log-book for July 25, 1916, at 8 o'clock A. M., 'following small sea'")

A. What wind have you got? If you have got a strong wind—

Q. (Intg.) You have in the log-book that you made these entries in, on the 28th of July in that log-book, "following sea," and on July 25th, at 8 o'clock in the morning, you have the entry, "following small sea"; I want you to tell me what the difference was between those two seas; one you marked "following sea" and the other "following small sea"?

(Deposition of Gustaf W. Johnson.)

A. The difference was because the wind was light; here the wind is fresh, so that when the wind is fresh, the sea is little.

Q. "Following sea" is an entry to designate a sea of greater intensity?

A. Yes; the sea generally comes up according to the wind; but it does not state it is a heavy sea.

Q. Was there a swell on, on the 28th of July, 1916?

A. I don't remember, sir.

Mr. CAMPBELL.—You can use the log-book to refresh your recollection.

Mr. LILLICK.—Q. On Sunday, July 30, 1916, you have the entry: "Com"—that means "came"—"Com. in strong northwest wind, clear and choppy sea." Do you remember that?

A. Sure; if I remember; you don't expect me to remember every day in the year; Jesus Christ could not do that.

Q. At four o'clock in the morning— [58]

Mr. CAMPBELL.—I object to counsel nagging the witness.

Mr. LILLICK.—I am not attempting to nag the witness. I am sure that you don't mean that I am purposely trying to nag the witness.

Mr. CAMPBELL.—I don't know what can be the purpose of the examination that you are making unless it is an endeavor to confuse the mind of the witness.

Mr. LILLICK.—You certainly do not contend that my manner is a nagging manner.

Mr. CAMPBELL.—Your attitude toward the wit-

(Deposition of Gustaf W. Johnson.)

ness is such—it is not such—that your are making a serious examination that would be material to the Court.

Mr. LILLICK.—I am surprised that counsel thinks I am improperly examining the witness. I am calling the witness' attention to separate items in the log-book.

Mr. CAMPBELL.—You are not asking the respective days on which any of this transpired, and you are asking this man to tell you the character of weather that prevailed over a number of days without exhibiting the log-book to him.

Mr. LILLICK.—I am asking him to look at the log-book with me, and I am examining him on the condition of the wind and weather on the day and evening she broke down.

Q. Calling your attention to the entries under Sunday, July 30, 1916—

Mr. CAMPBELL.—That is not the day she broke down; that is days afterwards, when she was on her voyage south.

Mr. LILLICK.—I am in error; this is the part of the log-book that is marked on the side with a lead pencil.

Mr. CAMPBELL.—Do those markings still appear there, Mr. Lillick? Can you see them? [59]

Mr. LILLICK.—Yes, they do.

Mr. CAMPBELL.—What are the markings?

Mr. LILLICK.—The markings run from the entry 4 A. M. on Monday, July 24th, down to and including the entry at 5:20 P. M. on July 31st.

(Deposition of Gustaf W. Johnson.)

Mr. CAMPBELL.—That is a lead pencil mark that runs down the margin; it is a line on the margin of the log-book. It is a line that runs down the margin?

Mr. LILLICK.—Yes, in the log-book.

Q. At 4 o'clock A. M. of the same day appears the entry, "same weather"; that is correct?

A. Yes, sir, that is correct.

Q. I call your attention to the entry under Tuesday, July 25, 1916, to the entry, 12:15 A. M. "Steamers' lights in shore. Made signals of distress which was answered and proved to be steamship 'Avalon,' agreeing with Captain to tow us to Astoria and towage to be settled by owners amicably or by arbitration, if necessary." Did the captain tell you to enter that in the log-book?

A. No, he did not tell me exactly; but I write it down the way things happen.

Q. Were you there when he talked to the captain of the "Avalon"?

A. Sure I was there; he talked to him in the megaphone.

Q. Have you any independent recollection of when you wrote that entry appearing opposite 8 o'clock A. M. on July 25, 1916, of "following small sea; same very moderate"; have you any independent recollection of the sea outside of that entry, about the sea itself?

A. That is the way it was, small sea, that is all I can put down.

Mr. CAMPBELL.—Q. What time was that?

(Deposition of Gustaf W. Johnson.)

A. It was breezing up a little off the heads.

Mr. LILLICK.—Q. Is there any difference usually in the weather, so far as the wind and sea is concerned, south of Meares [60] Lighthouse and north?

A. It all depends about the distance below or above Meares.

Q. Say 10 miles?

A. The further up you go, it all depends on the weather.

Q. The further up you go the weather is usually worse? A. No.

Q. Is there any difference at all?

A. I could not tell you. I'll tell you, you can have bad weather here and the finest kind of weather up in Seattle; I am not a weather man. It may be the finest weather going and we would have a gale of wind, and you would see in the paper it was fine.

Mr. LILLICK.—For the purpose of the question as to the manner in which this log-book was written up, but not to be bound by the entries in it, we wish the log-book to be offered in evidence as our exhibit No. 1.

(The log-book is marked Libelant's Exhibit No. 1.)

Mr. LILLICK.—May I see the other one?

Mr. CAMPBELL.—What is the one you want now?

Mr. LILLICK.—I want the scratch log of the "Hubbard."

Mr. CAMPBELL.—I will produce it.

(Deposition of Gustaf W. Johnson.)

Mr. LILLICK.—Q. In entering in your log-book a fresh northwest wind, what approximate velocity is there to the wind when you make an entry, “fresh,” as you have it in your log-book?

A. It means it is a little better than moderate; it is breezing up; it is fresh.

Q. How many knots an hour?

A. It all depends.

Q. I am asking you as the man who made those entries in the log-book—we will put it this way: A fresh northwest wind means a wind from the northwest and from 10 to 20 knots an hour, or 20 to 30, or 30 to 40? A. No, I would call that strong.

Q. What would you call strong?

A. Anything from 15 to 20—it all depends. [61]

Q. Didn't you say a moment ago that you would call a wind from 15 to 20 knots an hour, strong?

A. Sure, it would be; it would be strong. Say you go by the Beaufort scale, one is light; three and four you may call moderate; and five fresh; you call six or seven, strong.

Q. Then when you entered in your log-book—and you made these entries—the items fresh northwest wind, you had in mind the Beaufort scale, did you?

A. Yes, sure thing.

Q. What on the Beaufort scale did you intend fresh northwest wind to indicate?

A. Number five.

Q. Where was that pilot boat that you saw at the entrance to the bar?

A. On the starboard side, I believe.

(Deposition of Gustaf W. Johnson.)

Q. How far away? A. About a half a mile.

Q. Why did you say you did not remember whether there was a pilot boat there?

A. If I remember, going in, you mean?

Q. Yes.

A. I don't remember exactly, but I think I realize there was one on the starboard side; I think there was one on the starboard side. I also think she was at anchor. She layed there at anchor. I would not swear about it, whether it was a pilot boat or not.

Q. You don't know whether there was or not?

A. I am not sure it was a pilot boat; that is her station, just about where she is supposed to be.

Q. You don't know whether there was one or not?

A. I am not positively sure it was a pilot boat, but I think there was a boat laying there. It may have been a fishing boat; she had a gasoline engine; the power in the boat was a motor, she had motor power.

Q. Why did you come to the conclusion that she had a gasoline motor in her? A. I know. [62]

Q. Do you know the captain of the "Avalon"?

A. I don't know him at all; I seen him, that is all.

Q. Do you know how long he has been going back and forth to Astoria?

A. He is an old-timer around here.

Q. He was an old-timer up there?

A. He must be up and down the coast; I don't know about Astoria; I didn't think he knew much about the bar going in there.

(Deposition of Gustaf W. Johnson.)

Q. You a moment ago said because he said so, did you not?

A. That is what he hollered to us. He said *he* to go to anchor at a certain place; we said, nothing doing, let's do down here; he said, "I am glad of it; I am not very much acquainted around here." I heard him say that to the captain.

Q. Where was the captain of the "Avalon"?

A. On the bridge.

Q. He was calling, was he?

A. He just hollered through the megaphone.

Q. How long was the tow-line?

A. He shortened her up after he got in the river.

Q. That was after he got in the river?

A. Sure.

Q. How long was the tow-line there?

A. The greater part of it was a couple of hundred fathoms; he used all of the rope he could on the outside; he shortened it up.

Q. How long was that?

A. The line, maybe 450 or 500 feet long; I cannot tell you; I am not sure.

Q. You were on board the "Hubbard" going up?

A. Yes, sir.

Q. You saw the "Avalon" ahead of you?

A. I cannot judge the distance; he shortened his line.

Q. When the "Avalon" first started out with the "Hubbard" in tow, how long was the line between the two vessels?

(Deposition of Gustaf W. Johnson.)

A. I don't know for sure; I could not tell you.
[63]

Q. Could you tell whether it was 1,000 fathoms long?

A. Yes, I know for a fact it was nothing over 600 feet long.

Q. It was not over 600 feet?

A. Six hundred feet; I don't think it was over 600 feet; I don't know how long this line was; I don't know anything about it.

Q. How long was it after you got in, after you shortened it up?

A. I don't know, but I do know he shortened it.

Q. You don't know how much—how far?

A. No.

Q. To the best of your recollection the stern of the "Avalon" was how far from the stem of the "Hubbard" after you had gone inside?

A. I would not swear to that.

Q. How far away was the end of the jetty from you as you went past it?

A. Quite a ways.

Q. How far is "quite a ways"?

A. About two miles probably—you mean when—

Q. (Intg.) Repeat the question. (Question repeated by the reporter as follows:) "Q. How far away was the end of the jetty from you as you went past it?"

A. When we entered the bar, the jetty runs right out towards the bar on the Columbia River. The jetty, I should judge, was about a mile or so.

(Deposition of Gustaf W. Johnson.)

Q. A mile or so away from you as you went past it?

A. Yes, as we went in—the channel is about one mile, say.

Q. That is not what I asked you: How far away was the end of that jetty from the “Hubbard” when you passed it going in?

A. I don't know; I didn't measure it; if you don't want to take my word for it I cannot give it to you any more correct.

Q. Was it a mile away, or half a mile away?

A. I told you it would probably be about a mile, maybe less than that. [64]

Q. On direct examination you said that a loaded vessel does not roll?

A. No, sir; with a deckload of lumber and in that kind of weather.

Mr. CAMPBELL.—He said that night.

Mr. LILLICK.—Q. My notes state that the witness testified that a loaded vessel does not roll, I want to ask you now whether a loaded vessel ever rolls?

A. It all depends on what kind of a cargo she has got, and what kind of weather and wind and sea.

Q. A vessel loaded as the “Hubbard” was, with a deck cargo of lumber, and heavy weather, will she roll?

A. A little bit in heavy weather. The deckload keeps her steady.

Q. Did the “Hubbard” have a cargo in her hold too? A. Sure thing.

Q. She had her deck cargo too, did she not?

(Deposition of Gustaf W. Johnson.)

A. Sure thing, certainly.

Q. Do you know of any occasions on the coast here where a steam schooner like the "General Hubbard," with a hold cargo and deck cargo of lumber has gotten in a heavy sea and lost her deck cargo because she was rolling in the heavy sea?

A. Yes, there is cases; it all depends on what kind of ships, and how they are built.

Q. When you attempted to pass those heaving lines what caused the three misses, if you know?

A. Just caused by accident; making a grab for the line—you cannot grab a line every time.

Q. How near did the "Avalon" get to the "Hubbard" when they were passing those lines?

A. About, I should judge, about 15 fathoms; between 15 and 18 fathoms; the heaving line I had was about 20 fathoms long. I had that line pretty well stretched along; I should say he was 15 or 18 fathoms.

Q. You said the "Hubbard" was laying in the trough of the sea; the sea, such as there was, was coming from the south towards her?

A. Yes, sir. [65]

Q. Was she helpless?

A. Of course, when a vessel is broke down in that way, she cannot do nothing.

Q. Did she have any sail on board?

A. We had some tarpaulins.

Q. Did you have any masts? A. Yes, sir.

Q. How high were the masts?

A. I don't remember exactly; quite high.

(Deposition of Gustaf W. Johnson.)

Q. Quite high, what do you mean by "quite high"? A. Say about 90.

Q. About 90 feet? A. Yes, sir.

Q. How far were you from shore?

A. About 14 miles off Cape Meares, somewheres about that—I am not positively sure. I know the log-book tells you the distance off, I guess; I don't remember now.

Redirect Examination.

Mr. CAMPBELL.—Q. I want to know whether or not this log-book which has been offered in evidence, and in respect to which Mr. Lillick has been questioning you, was copied from any other log-book of the same kind? A. No, sir.

Q. Have you ever written up two log-books of the "General Hubbard" covering these days from July 15th to August 2, 1916?

A. No, sir; that is the only one.

Q. Were these entries made all at one time, or were they made out day by day?

A. They were made day by day, according to my time; sometimes I wrote in the evening; sometimes in the afternoon; it all depends.

Q. Which side of the channel at the entrance to the Columbia River did the "Avalon" take in going up the river? A. To the left-hand side.

Q. Was that side nearest or the side furthest from the jetty?

A. The side furthest from the jetty. [66]

Q. Do you know how wide the channel is at the end of the jetty?

(Deposition of Gustaf W. Johnson.)

A. I should judge a mile; a mile right across, in between the buoys.

Q. Do you know how far the jetty is to the southward of the red buoys marking the southerly side of the channel?

A. About a quarter of a mile; it might be half a mile probably; say half a mile; I am not positively sure.

Q. What have you done in San Francisco for the last eight weeks?

A. I have been up for a master's license; I just got through a few days ago.

Mr. LILLICK.—Q. Did you get your license, Captain? A. Yes, sir.

Mr. CAMPBELL.—That is all.

Mr. LILLICK.—That is all. [67]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Friday, November 24, 1916, before me, Thomas D. Hayden, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Gustaf W. Johnson, a witness called on behalf of respondent in the cause entitled in the caption hereof, and Ira S. Lillick, Esq., appeared as proctor for libellant, and Ira A. Campbell, Esq., appeared as proctor for re-

[Endorsed]: Filed Mar. 26, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [69]

In the District Court of the United States, in and for the Northern District of California, First Division.

STEAMER AVALON CO., a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD," Her Engines, Boilers, Machinery, Tackle, Apparel, Furniture and Cargo,
Respondent.

Deposition of Charles A. Watts, for Respondent.

BE IT REMEMBERED, that on Monday, December 11, 1916, pursuant to stipulation of counsel hereunto annexed, at the office of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared before me, Thomas D. Heyden, a United States Commissioner for the Northern District of California, to take acknowledgments of bail and affidavits, etc., Charles A. Watts, a witness called on behalf of the respondent.

Ira S. Lillick, Esq., appeared as proctor for the libelant, and Ira A. Campbell, Esq., appeared as proctor for the respondent, and the said witness having been by me first duly cautioned and sworn

(Deposition of Charles A. Watts.)

to testify the truth, the whole truth and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of the above-named witness may be taken *de bene esse* on behalf of respondent, at the [70] office of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, on Monday, December 11, 1916, before Thomas D. Heyden, a United States Commissioner for the Northern District of California, and in shorthand by E. W. Lehner.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial on the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witnesses and the signing thereof is hereby expressly waived. [71]

C. A. WATTS, called for the respondent, sworn.

Mr. CAMPBELL.—Q. State your full name.

A. Charles Alexander Watts.

Q. What is your business? A. Master mariner.

(Deposition of Charles A. Watts.)

Q. How long have you been a master mariner?

A. Since 1888; 27 years.

Q. How long have you been a master mariner in the Pacific Coast trade? A. 15 years.

Q. In what character of business were you engaged during the most of those years?

A. In the foreign and coastwise trade.

Q. What classes of vessels?

A. Sailing ships and steamers.

Q. Were you master of the steam schooner "General Hubbard" in July, 1916, at the time she broke down off Cape Meares and was towed into the Columbia River by the steamer "Avalon"?

A. I was.

Q. Do you recall approximately the hour when you left the Columbia River on the afternoon or evening preceding the breakdown?

A. I think it was about 3:40 I left the Hammond Mill above Astoria at Tongue Point—that I left the dock.

Q. What time was it that night that you first knew that your machinery had broken down?

A. One bell, quarter to twelve.

Q. At that time, was the engine itself stopped?

A. No. The chief engineer came and reported to me that he would have to stop for an examination, as the journals were heated.

Q. Did you again start ahead after that examination? A. No.

Q. What was the trouble?

A. The chief engineer reported to me that the

(Deposition of Charles A. Watts.)

crank-shaft was broken short off between the intermediate and high.

Q. As soon as you were advised of the breakdown, what did you do with the steamer?

A. I immediately went in the engine-room to see where the breakdown was, talked the matter over with the chief [72] engineer, to see if he could not run under low pressure. He said no, it would be impossible for us to make any headway at all.

Q. Then what did you do?

A. I decided to throw up rockets to attract the lighthouse-keeper at Cape Meares to get me a steam tug; I thought they would know what steamer it was there at that time, and would telephone to the Hammond Lumber Company, and they would send out a tugboat from Astoria.

Q. What was the nearest lighthouse station?

A. Cape Meares.

Q. Approximately how far distant do you estimate that to be?

A. About twelve miles; from twelve to fourteen miles.

Q. Where did you expect them to telephone to?

A. I thought they would telephone to Tongue Point, to the Hammond Lumber Company.

Q. Where is Tongue Point with respect to Astoria?

A. It is about three and a half miles, I should say, above Astoria.

Q. What was the condition of the atmosphere at the time that you shot these rockets?

(Deposition of Charles A. Watts.)

A. Well, it was clear, overcast at times.

Q. Moonlight or dark?

A. At times it was moonlight; practically moonlight; you could see quite a piece, quite a distance.

Q. Could you see the stars overhead?

A. Oh, yes, at times.

Q. What did you do after you shot the rockets, the first rockets?

A. I waited for a while to see if Cape Meares would answer.

Q. What did you do?

A. (Continuing.) And send for some steam tug.

Q. Then what next transpired?

A. Well, I sent off several, and after that I seen a steamer slightly in shore, and she paid no attention to them; we sent off some more rockets, and finally the steamer turned around and came down on us, bore down toward us.

Q. What steamer did that turn out to be?

A. It turned out to be the steamer "Avalon," Captain Christensen.

Q. Was she loaded at the time?

A. No, I think she was light; I don't know whether she had any cargo on or not.

Q. Did she have any lumber on her?

A. No lumber at all; she was [73] light.

Q. How did she train? Was she on an even keel?

A. No, set by the stern, quite a lot by the stern.

Q. Did her trim differ any from that usually taken by those wooden lumber-carrying vessels when they travel light?

(Deposition of Charles A. Watts.)

A. No, just about the same as all of them.

Q. What transpired between you and the master of the "Avalon" upon the latter coming up to the "Hubbard"?

A. I think, when he got alongside of me he asked me what the trouble was, and I told him a broken crank-shaft.

Q. What was said, if anything, with respect to his towing you to the Columbia River?

A. I asked him if he would tow me to the nearest port, Astoria.

Q. What did he say?

A. He said he would. I asked him what about an agreement, and he remarked something I could not hear. Then I took my megaphone and sung out plainly to him and asked him if it would be satisfactory to him if it be left to be settled by the owners, and if not by arbitration, and he says, "Yes, that is perfectly satisfactory to me"; and at the same time he sung out, "I will get my hawser ready, and come back as soon as I am ready to tow you."

Q. What did he do with the steamer after that?

A. He ran up ahead of us and laid there, and got his hawser ready; of course, he had to call the watch out, get the hawser ready, and after he got the hawser ready he came down and went around the lee side and up around to windward again, and then backed down again onto the bow.

Q. Onto which bow? A. Our port bow.

Q. Was that your lee or weather bow?

A. Lee bow.

(Deposition of Charles A. Watts.)

Q. How was the hawser made fast?

A. He hove a heaving line and it fell short; then I think we hove a heaving line and it fell short, and he hove another line, and if I remember rightly it fell short, [74] and we again hove ours and they caught our heaving line; we hauled the hawser aboard and made it fast.

Q. What is the approximate length of these heaving lines?

A. I should say a heaving line would be about 70 feet, about ten or twelve fathoms.

Q. Did they succeed in fastening the hawser?

A. Yes, we had no trouble whatever, after we got the heaving line.

Q. Where was it made fast on your steamer?

A. I made it fast to the bitts and took it back to the foremast.

Q. What did he do after the hawser was made fast? A. He went ahead and started for Astoria.

Q. What, if anything, transpired during the towage up to the time that you reached the Columbia River whistling-buoy, we will say?

A. Nothing at all; the weather moderated, died out to a calm; we had light rains at times passing Cape Meares.

Q. At the time you broke down and the time the "Avalon" came to you, what was the condition of the weather and sea?

A. The wind was about, I should say, about north northwest, with a moderate sea, you know, and passing clouds at times.

(Deposition of Charles A. Watts.)

Q. What do you mean by a sea, one with white-caps or without?

A. No, a moderate sea; the sea was very moderate, very quiet.

Q. Describe it in detail as well as you can so that the court may grasp it?

A. It was blowing about, what I would call a 5 knot breeze at the time.

Q. How was the surface of the water; what was its condition?

A. Well, it was what we call moderate, what we describe as a moderate sea.

Q. Do you make a distinction in your description between sea and swell?

A. Oh, yes; there is quite a lot of difference between sea and swell. [75]

Q. Was this a sea or swell?

A. It was a swell; a moderate northwesterly swell.

Q. What distinction do you make between a sea and swell?

A. A sea is a short sea, and a swell is one of those long rolling swells.

Q. Was there any water coming on to either of the steamers from the sea or swell that prevailed, as you have characterized it? A. None whatever.

Q. What was the "Hubbard" loaded with at the time? A. Lumber.

Q. How did she lay with respect to the line and the run of the swell?

A. We laid right in the trough, right in the trough

(Deposition of Charles A. Watts.)

of the sea—we were laying in the trough of the sea.

Q. As you lay there was there any danger in your judgment of losing your deckload?

A. No, none whatever.

Q. Approximately what time of day, and if you cannot recall, you are entitled to refresh your recollection from the log-book, did you get up to the buoys at the entrance to the Columbia River?

A. I should think it was about 4:10 or 4:15; shortly after 4 o'clock.

Q. Was there any difficulty experienced in towing the "Hubbard" up the entrance to the Columbia River? A. None whatever.

Q. Which side of the channel did the "Avalon" take?

A. Well, I will tell you: I do not consider the man was acquainted you know with the Columbia River—

Q. —That is not my question: Which side of the channel did the "Avalon" take?

A. He took the north side of the channel.

Q. What is the distance between the black buoys marking the northerly side of the channel and the red buoys marking the southerly side of the channel at a point opposite the end of the jetty, the south jetty? A. I should say about a mile.

Q. Was there any current experienced in the river? [76]

A. At the time that we were towing in the ebb was running, the ebb tide.

Q. Will you state whether or not captain at any

(Deposition of Charles A. Watts.)

time during the towage into and up the Columbia River there was ever any danger of either the "General Hubbard" or the "Avalon" swerving on to the jetty? A. None whatever.

Q. Were either of those vessels at any time close to the jetty?

A. No, not dangerously close; of course you pass the jetty pretty close; the channel is only a mile wide.

Q. At any time during the towing up the Columbia River was either vessel in any danger of stranding or going ashore? A. None whatever.

Q. What was the condition of the weather that prevailed during the day that you were being towed toward the Columbia River?

A. It moderated out to a calm with light rain at times.

Q. At the time that you crossed the Columbia River bar what was its condition?

A. The bar was perfectly smooth.

Q. Where did the "Avalon" take you to?

A. Well, when we got up to Fort Stevens "he took his megaphone and he asked me where I wanted to anchor; he said "I am not acquainted with the Columbia River and I have no chart"; so I told him, "All right." We shortened in our hawser and I told him I would megaphone him what time to slow down and I would let go the hawser, and I told him I was going to anchor between the Flavel Wharf and the jetties; so when we got up there I went forward with my megaphone and

(Deposition of Charles A. Watts.)

phoned him to slow down and he slowed down, and I let go of the hawser and sheered off to starboard and let go my anchor.

Q. After you anchored did you proceed up to Astoria with him?

A. The captain came alongside and asked me whether I was going to the city, and I thanked him very kindly and told him I was, and I [77] went up to the oil wharf with him; he was not acquainted or at least he said he was not acquainted in the Columbia River at all.

Q. Did you prepare an agreement which was subsequently signed by the captain of the "Avalon" with respect to this towage service?

A. I wrote up an agreement and got the captain to sign it.

Q. Will you state fully the circumstances under which the agreement was written out?

A. After we got up to the oil wharf, he asked me into his room, and I went into his room and I took over the copies of the agreement, that is, the agreement and the copies that I had written up, and I asked him if he would sign it so that I could have something to send to my owners to show what agreement I had made for salvage and towage in; he read it over and said there was nothing to it and signed it; I also signed it and gave him a copy, and I retained the two.

Q. I hand you what purports to be a copy of an agreement and ask you if this is a copy of it?

A. Yes, that is a copy of it.

(Deposition of Charles A. Watts.)

Q. Now, Captain, at the taking of the deposition of the mate the suggestion was made that this log-book which I show you, which has been marked Respondent's Exhibit 1 was not the regular log-book of the ship but was one that had been made up?

A. No, it is the log-book.

Q. Just a moment now—either independently of the ship's regular log or a copy from the log, the regular log. I will ask you whether or not that is the fact?

A. That is the regular log of the ship.

Q. Will you look at it please, where the entries commence July 15? A. This is the regular log.

Q. When was that log written up, all at one time or when?

A. No, he writes it up every day.

Q. Who writes it?

A. The chief officer writes that log. [78]

Q. Have you produced the log which precedes that one? A. Yes.

Q. Do I hold it in my hand?

A. You have it in your hand.

Q. The last entry in this log that I have in my hand is voyage 91 ending July 14, 1916, 12 P. M.

A. This one starts Saturday morning.

Q. What log is this I have in hand now?

A. That is the log-book from the previous voyage starting from the Atlantic or wherever it starts from. It starts, I think from the Atlantic on the voyage to Mexico.

Q. Will you explain why it was that on July 15th

(Deposition of Charles A. Watts.)

you started your entries in this log-book marked Libelant's Exhibit 1?

A. Yes; we had some damaged sugar.

Q. When?

A. On one of our trips East, along in February, and Mr. Hammond requested this log-book to be left ashore for extending the protest.

Q. That is the log-book which ends with July 14?

A. Yes, voyage 91, ending July 14, 1916. This log-book was ashore and this was a new log-book that I took for the beginning of the voyage.

Q. On July 15? A. On July 15.

Q. Will you show us in the old log-book some of the entries that had to do with this sugar damage that occasioned this being retained ashore?

A. Here it is, where it is signed by the chief officer and myself.

Q. That is on voyage 86? A. Voyage 86.

Q. January 25, 1916?

A. January 25, 26 and 28. These dates are in the extended protest, you can see, for the damaged sugar.

Q. I notice on January 25, 26 and 28 there appears your signature, Charles A. Watts, Master and G. W. Johnson, Chief Mate, and I notice those signatures do not appear on each day throughout the book. What significance do they point to? [79]

A. Well, I always in case anything occurs out of the ordinary have it signed by myself and chief officer, in case of any dispute of any kind; on this occasion you will find the pilot house book signed.

(Deposition of Charles A. Watts.)

Q. In the log-book which has already been offered in evidence as Libellant's Exhibit "I" commencing July 15th I note no signatures until we come to July 24 and then appears your signature "Charles A. Watts, Master," on the 24th and 25th; what explanation do you make of your having signed those places?

A. That was on account of the accident?

Q. On account of the accident?

A. Yes; the pilot-house log-book is also so signed, in case the officers are away at any time, we have got their signatures to whatever they enter into it.

Q. The question has been raised as to the meaning of this lead-pencil line in the margin of this first log-book. Do you know who made the marginal lead-pencil line? A. I can't explain that.

Q. Have you ever delivered this log-book into the hands of the average adjusters? A. No.

Mr. CAMPBELL.—I offer in evidence the log-book covering the dates from the 18th of December, 1915, to July 14, 1916.

Mr. LILLICK.—We object to the earlier entries in evidence on the ground that they are not material.

Mr. CAMPBELL.—They are not offered in proof of anything recited in there, but they are offered to meet the insinuations which counsel admitted and frankly stated on his last hearing he was making with respect to the log-book commencing July 15.

(The log-book is marked Respondent's Exhibit 2.)

Q. Now, Captain, I will ask you whether or not your steamer was in any danger whatsoever from

(Deposition of Charles A. Watts.)

her disabled condition from the time that she broke down until she was towed into the Columbia River?

A. She was in no danger whatever at any time.

[80]

Q. It is alleged in the libel brought in this case that the steamer "Avalon" proceeded to tow the said steamer "General Hubbard" to the said port of Astoria, Oregon, and on account of the strong current at the Columbia Bar had great difficulty in so towing said steamer "General Hubbard" as, by reason of the said strong current said vessels were laboring heavily, and both of said vessels were at said place in a perilous position. I will ask you whether it is a fact that at any time during the performance of this towage service either of these vessels labored heavily at all? A. It is not.

Q. Now, are you acquainted with the master of the said steamer "Avalon"?

A. Yes, I met him for the first time at the time of the accident.

Q. What was his name, do you remember?

A. Well, his last name was Christensen; I could not tell you his first name; it is the first time I had ever met him.

Q. I will ask you if at any time subsequent to the rendition of this service you had any conversation with the master of the "Avalon" in which he told you that he had sold any claim that he might have had for performing this service to the steamer Avalon Company?

A. When I was in San Pedro discharging, a long

(Deposition of Charles A. Watts.)

distance telephone came for me, and I went up to answer it, and it was from Captain Christensen; the "Avalon" was at Redondo; he asked me if I could supply him with a second officer or one of my officers to go as second mate. I told him I would see them and let him have one if he would go. He said his ship would be liable to a fine if she sailed without one; so I went aboard the ship and asked my officers; my third officer agreed to accept the position; I called him up on the phone and told him I had a second officer, and I would come down with the second officer to Redondo beach and be there at noon; he said he [81] sailed at one o'clock; on going down Captain Christensen met us at the head of the wharf and invited me aboard to have dinner. At the table most of the conversation was with regard to the towing in and the salvage, and the captain remarked that everything was all settled up as the owners of the "Avalon" had allowed all the crew one-half a month's salary, and that they were perfectly satisfied; the officers and engineers were at the table at the time.

Mr. LILLICK.—We ask that the last answer go out so far as it applies to what the captain was told by the captain of the "Avalon" with reference to the salvage end of it so far as the crew are concerned, being all settled up, and all that follows in the answer.

Mr. CAMPBELL.—Now, at this time we demand the production of any agreement and receipt or writing that has been taken by the steamer Avalon Com-

(Deposition of Charles A. Watts.)

pany or the Hart-Wood Lumber Company or any of the officers of either of the companies or by any officer or agent or person interested in the steamer "Avalon" covering any payment made to the master, officers or crew of the steamer "Avalon" on account of compensation for services rendered by members of the crew of the "Avalon" in towing the "General Hubbard" into the Columbia River.

Mr. LILLICK.—Subject to the instruction of the Court we will produce every document in connection with this matter that the Court instructs us to produce, upon the trial of the case.

Cross-examination.

Mr. LILLICK.—Q. Captain, do you remember that when the "Avalon" and the "Hubbard" were opposite the south jetty you stopped there for about half an hour?

A. No, we did not stop at all; we did not stop at all on the way, but we were going very slow; there was no time that we stopped. [82]

Q. There was a time while the two vessels were opposite the south jetty when the "Avalon" was making no headway against the ebb tide there, was there not? A. Not to my knowledge.

Q. Don't you remember that when you got—

A. —She always had headway.

Q. Well, don't you remember when you got opposite that south jetty the vessels practically stopped; they might have had headway in that the tide coming against you held you up, but you do remember, do you not, when you were opposite that south jetty

(Deposition of Charles A. Watts.)

you were practically stopped for about half an hour?

A. We were not stopped at any time during the voyage; the tide was running pretty strong but we were always moving over the ground; we were going very slowly, but we were not stopped.

Q. You say you were not stopped; about how fast were you going, at what headway, opposite the south jetty, in your judgment?

A. I suppose, in my judgment we were going, I should say, about a mile and a half an hour; there was no time that we were actually stopped, you know.

Q. How far were you from the end of the south jetty at that time when you were making such slow headway?

A. I should say it was about $\frac{3}{4}$ of a mile; we were favoring the north shore, favoring the north bank.

Q. Would you say you were $\frac{3}{4}$ of a mile away from the end of the jetty at the nearest point?

A. At the nearest point.

Q. At which you approached it? A. Yes.

Q. The river was 20 or 22 feet above normal height, was it not, when you went in?

A. I would not say exactly; I could not say.

Q. When did you write out the agreement that you had the captain of the "Avalon" sign?

A. The next morning when we were towing. [83]

Q. While you were on the way up? A. Yes.

Q. Did you discuss that with your first officer?

A. The agreement?

Q. Yes.

(Deposition of Charles A. Watts.)

A. Not at all, no, but after writing it out I read it to him.

Q. Did you make any changes in it?

A. None whatever.

Q. Do you remember having told the captain of the "Avalon" after you had asked him to sign the agreement that you had written out that he could telephone to his people at Willapa and if he were liable to get into trouble for having signed that that you would tear your copy up and he could tear his copy up?

A. That is perfectly right; on the way up to the telegraph station Captain Christensen remarked to me that it would be the cause of his losing his position with the Hart-Wood Lumber Company, through his signing such an agreement; I told him, I remarked to him then, I said "Captain Christensen, you telegraph or telephone to your owners in Willapa Harbor and if they tell you you have done wrong," I said, "we will destroy it." I says, "I do not want to be the cause of your losing your position by towing me into Astoria."

Q. You testified in your direct examination that Cape Meares lighthouse was, you estimated, 12 or 14 miles off, where the vessel was lying when you first sent up the rockets? A. Yes.

Q. Could you see the lights from where you were?

A. Yes, all the time.

Q. You got no reply from the lighthouse?

A. No, they never answered at all.

Q. What rockets did you send up first?

(Deposition of Charles A. Watts.)

A. I sent up the ordinary rockets, you know, the ordinary rockets that burst in stars.

Q. How many did you send up the first time?
[84]

A. I could not tell you how many I sent up; I used to send one up every 15 or 20 minutes.

Q. Didn't you send up first 3 or 4 in rapid succession and then wait a little while?

A. No, I never done that at any time; I sent them myself, too.

Q. You sent up one?

A. One; and then after sending up one rocket I burned a blue light.

Q. Then you waited for 15 minutes?

A. Yes, 15 or 20 minutes.

Q. In the meantime you received no answering rocket? A. Received no answer at all.

Q. Then you sent up another rocket, burnt another light and no answer? A. Yes.

Q. And then the third time you saw the lights of the "Avalon," did I understand you?

A. Well, I think it was more than that; it was the fourth or fifth time before we saw the lights of the steamer which afterwards turned out to be the "Avalon."

Q. Then she finally answered with a search light, did she not?

A. She did; she passed us and after she got past us Captain Christensen told me that the second officer, who was on deck did not see our signal, and when the mate came on deck he seen it. He was away

(Deposition of Charles A. Watts.)

past, he was past 2 or 3 miles at the time of seeing the signal.

Q. Had you seen her as she was going by?

A. Yes.

Q. How far away did she pass you?

A. I presume she would be about 3 or 3½ miles inshore of us.

Q. Did you burn blue lights while she was going by you? A. Yes.

Q. How far were you from the nearest point on shore at that time?

A. Cape Meares was the nearest; I think it was about 14 miles at the time the "Avalon" passed.

Q. Was the lighthouse directly inshore from you?
[85]

A. Yes, sir, it bore northeast quarter east, if I remember rightly.

Q. The shore then was directly abeam?

A. Cape Meares was the nearest point of land to us; it kind of goes in on a curve, the coast coming down.

Q. How does the current set there?

A. It generally runs with the wind; with a northerly wind, that would make the current run to the southward, and with a southerly wind it will change to the northward.

Q. At this time it was setting south, was it?

A. There was practically no current at all, because the wind had not been northerly long enough time.

Q. Was it not blowing from the north when you left the river?

(Deposition of Charles A. Watts.)

A. There had been hardly any wind at all from the time I left the river.

Q. The wind had not increased any from the time you left? A. No.

Q. Isn't there a regular current setting up and down the shore in here?

A. Inside of the 3-mile limit, yes.

Q. But not outside?

A. No regular current on the coast; the currents on this coast depend entirely on the wind; after the wind has been blowing any length of time from the north the current will start running to the southward and *vice versa*.

Q. Now, that current inside the 3-mile limit, which way does it set?

A. It sets in and off of the shore.

Q. Do you know how that current was setting at this time?

A. Practically speaking I do not think we had any.

Q. Within the 3-mile limit, I mean?

A. No, I mean where we were.

Q. I am speaking of the current inside of the 3-mile limit? A. I don't know. [86]

Q. You had a full deckload on, Captain?

A. Yes, a full deckload.

Q. Were loaded down to your loading lines?

A. Yes, loaded down to the loading lines.

Q. You had no wireless on the "General Hubbard," did you? A. No, no wireless.

Q. Had you attempted to rig up any sort of sails

(Deposition of Charles A. Watts.)

to keep your head up to the sea before this, Captain?

A. No, she came right up; there was no need of any.

Q. She was lying broadside to the swell?

A. Right in the trough of the sea, but she was not lying quite broadside; the sea was about 6 points on the bow; with all the sails or even with steam you could not keep her in a better position. The sea was just breaking on the bow about 6 points.

Q. What kept you in that position from the swell?

A. The weight of the ship; there was not enough sea.

Q. There was a moderate swell, was there not?

A. A moderate swell and moderate sea; it was not ever changed; she changed her head from south southwest to west southwest, 4 points.

Q. You mean she was just wallowing around in the sea? A. She was not.

Q. She had no headway at all, had she?

A. Practically speaking no; she might have had about, I should judge, $\frac{1}{2}$ a knot of a drift—drifting down about south by west.

Q. So that the current was then setting down about $\frac{1}{2}$ a knot an hour, would you say?

A. No, it was not the current; it was the wind and the sea; I suppose, you know, there might have been a light current, but there was none, you know, distinguishable.

Q. What I am getting at, Captain is, the vessel was without any motive power at all?

(Deposition of Charles A. Watts.)

A. Yes. [87]

Q. I would assume that she would lie in the trough of the sea, and yet you say she was quartering up toward the sea. What kept her in that position?

A. She comes up; a vessel will never lie steady, without she had lines to moor her there; she will always fall off and come to; she will never stay in the same place.

Q. She was lying in the trough of the sea?

A. She was lying practically speaking in the trough of the sea.

Q. You spoke of one of the vessels setting down by the stern; was that the "Avalon" or the "Hubbard," on your direct examination?

A. The "Hubbard" was, I think, about 12 inches by the stern, but the "Avalon" was about 2 feet or so by the stern—I should say about 3 feet by the stern.

Q. You also said on your direct examination, that there were light rains as she was passing Cape Meares: is that correct?

A. Yes, passing rain squalls at times.

Q. Captain, you do not mean to have us understand that that bar was perfectly smooth and that any swell was not perceptible at the bar, do you?

A. I do. There was no swell on the bar whatever, perfectly smooth.

Q. Now, as to this log-book, Captain: when did your owners ask you to turn in the old log-book, do you remember?

A. Yes, the day I finished discharging the lighter

(Deposition of Charles A. Watts.)

July 14th or whatever date it is.

Q. The day the log-book states?

A. Yes, I had to take it to the Hammond Lumber Company's office and they sent me that new book aboard. [88]

Q. You said that this book was written up every day. You did not see this mate write this all up, did you?

A. No, he writes that up from the pilot-house log.

Q. You don't know of your own knowledge that he wrote that up every day? You only know he ordinarily writes it up every day?

A. He ordinarily writes it up every day. I know of my own knowledge that all of these days that these entries were signed by me it was written up.

Q. You signed these entries on different days, and not on the same day, Captain?

A. No, I signed these entries all the same day.

Q. These two entries of the 24th and 25th you signed on the same day? A. Yes.

Q. And that was on the 25th, was it, or later?

A. I don't know; whatever date I have there.

Q. One is the 24th and the other is the 25th; you don't remember whether you signed that on the 25th or some other day?

A. No; I think I signed it the day that we arrived there; the 26th it was signed, I guess, just before we got in the Columbia River, I think, if I remember rightly.

Q. Captain, wasn't there some danger of the hawser getting foul of the propeller of the "Avalon"?

(Deposition of Charles A. Watts.)

when they started to make that tow?

A. Not at all.

Q. Why not?

A. None whatever, unless it be through the carelessness on board of the "Avalon."

Q. Why not?

A. It is impossible for it to get there. I don't think the captain would back the steamer with the hawser over the stern.

Q. The "Avalon" was under way all the time, was she not? A. Under way all the time?

Q. Her wheel was going during all the time you were throwing the [89] heaving line?

A. No, I do not think so. Her wheel was stopped, because we were not going when heaving the heaving line.

Q. Did he come in within 70 feet and not have his wheel going one way or the other?

A. Certainly—he certainly did; and he didn't start his wheel until I sung out and told him to go ahead from the bridge.

Q. He backed into you?

A. He backed into my lee bow.

Q. And then just laid there?

A. Just laid there.

Q. And then from the time you first commenced throwing those lines, it is your idea that his wheel was not going at any time until you sung out to him "Go ahead"?

A. Well, that is what I think; I am sure his wheel was not going; I sung out and told him to go ahead

(Deposition of Charles A. Watts.)

after the hawser was made fast.

Q. I am speaking of from the time when he first backed in there and first, as I understand it, he threw his heaving line to you, and then there was one from your vessel to his, and then another one from his to you, and then one from your vessel to his again?

A. Yes.

Q. During all that time it is your idea that his wheel was not going?

A. His wheel was not going, yes.

Q. Have you ever performed a salvage service on this coast yourself, Captain?

A. No, but I have towed sailing ships from here to the canal, one 2,000 ton ship, with 4,000 tons of cargo, to Balboa, with the "General Hubbard," a year ago last February.

Q. What is the character of the anchorage ground off that point where you were when the "Avalon" picked you up?

A. It is a good anchorage ground all along that coast, down to Cape Blanco.

Q. Between Cape Meares and Cape what?

A. Between Columbia River and Cape Blanco, you can anchor any part of the coast.

Q. That is, if you are inshore close enough?

A. Yes.

Q. You had no way to get assistance to you except by these rockets [90] and burning lights, had you?

A. Yes; what I was going to do the next morning was to send my boat ashore to Cape Meares; I was

(Deposition of Charles A. Watts.)

not going over half a knot, drifting, and at daylight I figured I would only be about 15 miles from Cape Meares lighthouse.

Q. You were 14 that night?

A. Yes, supposed to be; between 12 and 14.

Q. You would have been drifting on south?

A. We would have drifted about south by west, as near as I could tell you.

Q. Would you have been farther away than 15 miles, or not?

A. No; you see, it was one o'clock in the morning, and it is daylight at half past five, which would have been only two miles drift—between two and three.

Q. Aren't almost all vessels of the size of the "Hubbard" on the coast equipped with wireless?

A. No. The law requires any ship carrying a crew complement of over 50 men to be equipped with wireless. Our complement was 26, I think—unless in the passenger trade.

Q. What was the draft forward and draft aft?

A. I could not tell you.

Q. If it is in the log-book, will you get it?

Mr. CAMPBELL.—Forward 17-8; aft 19-1, under date of July 24.

Redirect Examination.

Mr. CAMPBELL.—If there had been any danger to either of these vessels in proceeding into the Columbia River at the time that you reached the entrance, was there anything to have prevented either or both of them anchoring there?

A. No, nothing at all.

(Deposition of Charles A. Watts.)

Q. Have you ever anchored off the Columbia River entrance?

A. Certainly, I do all the time, when there is thick fog or anything, or a strong ebb; I anchor and wait until the change of tide. In this case, if I had been the captain of the "Avalon," I would have waited two hours and gone in with the flood tide. [91]

Q. If he had remained out there two hours longer, what would have been the condition of the current in the river then?

A. That would have been at a flood, I think in about two hours and a quarter.

Q. What two tugs are maintained at the entrance to the river by the port of Portland?

A. The "Wallula," and I forget the other one—the "Oneonta."

Q. Are they sea-going tugs?

A. Both sea-going tugs; the "Oneonta" towed me to 'Frisco.

Q. After this? A. When I left Astoria.

Q. What kind of anchors did the "General Hubbard" have? A. Patent anchors.

Q. Do you know their weight?

A. About two ton; I think the weights are about 4,250 pounds, if I remember rightly.

Q. What can you say of the capacity of the anchors to hold the "General Hubbard" if she had found it necessary to have anchored anywhere along the coast at that time?

A. She had good ground-tackle, and three spare anchors.

(Deposition of Charles A. Watts.)

Q. If there had been any head sea, what is your judgment as to whether or not the "Avalon," in her condition, could have towed the "General Hubbard" loaded against it?

A. If there had been any sea to speak of at all, the "Avalon" could not have towed us; she would have had to let go.

Q. Did Captain Christensen ever subsequent to your conversation with him on the way to the telegraph office, ask you to destroy your copy of this agreement?

A. Not at all; he says to me, he put it to me this way: "Captain, through my signing this agreement," he says, "You will make me lose my position with the Hart-Wood Lumber Company.

Q. You testified that he told you that if on communicating with his owners he found he was going to get into difficulty, or words to that effect, you would tear up your copy of the agreement. Did he [92] ever ask you to tear up your copy of the agreement?

A. No, he never asked me.

Q. Did he ever since protest to you against the agreement which he had signed? A. No, never.

Q. During your cross-examination, when describing the position of the "General Hubbard" in the trough of the sea, you used the expression that the sea was breaking under her bow. What do you mean by "breaking"?

A. The sea was just breaking, you say?

Q. Did you say that?

A. No. It was a moderate sea. The sea came on

(Deposition of Charles A. Watts.)

her bow, about 6 points on her bow; she was not lying exactly in the trough; she was lying about two points in the trough of the sea, and then she would fall off the other way two points; sometimes the sea would be about two points on the bow and sometimes two points off of the beam.

Recross-examination.

Mr. LILLICK.—Q. The chances of your anchors holding, if you had attempted to anchor with the “Hubbard,” would have depended, of course, upon how heavy the sea would have become, would it not?

A. Well, yes, in a way, certainly.

Q. Do you know the horse-power of the “Oneonta”?

A. Well, I did know, but I forget; no, I do not.

Q. You said a moment ago that the “Avalon” would not have been able to tow you in?

A. Yes.

Q. Do you know her horse-power?

A. I think the “Avalon” is 750—isn’t that it?

Q. You don’t know the “Oneonta’s”?

A. The “Oneonta” is a different class of ship; one is built for towing and the other not. The “Oneonta,” if I remember rightly, is 850 horse-power. One is built, of course, for towing, and the other not.

Q. Why didn’t you tell the captain of the “Avalon” to wait until [93] the tide flooded there at the entrance, Captain?

A. You do not suppose I would try to tell another man his own business or what he is to do?

(Deposition of Charles A. Watts.)

Q. You ordered him to go ahead when the line was fastened on the "Hubbard"?

A. Certainly I did.

Q. You ordered him to throw your line off inside the river?

A. No, I did not; I told him I would let go of his hawser; I did not order him.

Q. Then your reason for not telling him to wait for the flood tide was simply because—

A. (Intg.) Because he was the master of the towing ship.

Q. (Contg.) Because you knew that he was towing your vessel? A. Certainly.

Q. And he was in charge? A. Certainly.

Q. How long had it been before this that you had been in the Columbia River?

A. I could not say exactly; the log-book will show. I think about 16 days or 18 days before that.

Q. Eighteen days before you had been in there?

A. Loading.

Q. So you didn't know when there was going to be flood tide at the Columbia River?

A. I didn't know, you say?

Q. Yes.

A. What are you talking about? - Certainly I did. Didn't I know when it was flood? Didn't I have the tide-books? He didn't know, the captain of the "Avalon" didn't know.

Q. You didn't know, Captain, that there would be a flood tide there in two hours from the time you were there at the south jetty?

(Deposition of Charles A. Watts.)

A. Certainly I did.

Q. So that it is your testimony that there would have been a flood tide and the water setting in at that south jetty two hours after you had been there?

A. About two hours, or two hours and a quarter afterwards. [94]

Q. Did the "Hubbard" have a hawser aboard?

A. Yes.

Q. How long was it?

A. I had 140 fathoms, I think.

Q. Of what size?

A. 14-inch, with a wire towing spring.

Mr. CAMPBELL.—Q. What was the size of the hawser that they used?

A. I think the one we used was about 12-inch—10 or 12-inch. [95]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I certify that, in pursuance of stipulation of counsel, on Monday, December 11, 1916, before me, Thomas D. Heyden, a United States Commissioner for the Northern District of California, at San Francisco, at the offices of Messrs. McCutchen, Olney & Willard, in the Merchants Exchange Building, in the city and county of San Francisco, State of California, personally appeared Charles A. Watts, a witness called on behalf of respondent, in the cause entitled in the caption hereof, and Ira S. Lillick, Esq., appeared as proctor for libelant, and Ira A. Campbell, Esq., appeared as proctor for re-

[Endorsed]: Filed Mar. 26, 1917. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [97]

*In the Southern Division of the United States Dis-
trict Court, for the Northern District of Cali-
fornia, First Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY,

Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"

Her Engines, Boilers, Machinery, Tackle,
Apparel, Furniture and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

No. 16,110.

J. L. CHRISTENSEN, J. CARLSON, W. J.
BECK, P. RODLAND, A. LINDBERG,
CARL LINDBURG, H. PETERSEN, T. G.
ECKHART, OTTO ANDERSEN, A. AEL-
FORD, N. SAASTED, H. MILLER, NICK
MATHIESON, A. RAJAHN, L. CHRIS-
TENSEN, K. LARSEN, OLE ANDERSON,

H. ANDERSON, JULIUS STROM, TALBERT PREWETT, JOHN GAILEY, FRED LUNDIN and AUG. LOWREYS,

Libelants,

vs.

HUBBARD STEAMSHIP COMPANY, a Corporation, and HAMMOND LUMBER COMPANY, a Corporation,

Respondents.

Stipulation Re Taking Deposition of O. S. Wickland.

IT IS HEREBY STIPULATED by and between the undersigned proctors for the respective parties to the above-entitled causes that the deposition of O. B. Wickland may be taken in the city of Astoria, State of Oregon, before Edwin Judd, a [98] Notary Public for Oregon, as a commissioner, without the issuance of a commission for that purpose, upon this stipulation, on Tuesday, the 20th day of March, 1917, at the hour of ten A. M.

AND IT IS FURTHER STIPULATED that upon the completion of the taking of said deposition the same shall be by said notary returned to the Southern Division of the United States District Court for the Northern District of California, First Division, and may be offered in evidence on behalf of any of the parties to the above-entitled causes, subject to objections only as to the materiality, relevancy or competency of any of the questions propounded or the answers made thereto by the said witness.

Dated at San Francisco, California, this 13th day of March, 1917.

IRA S. LILLICK,
Proctor for Libelants.

McCUTCHEM, OLNEY & WILLARD,
Proctors for Claimant and Respondent. [99]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

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Respondents.

Stipulation Re Deposition of O. S. Wickland, etc.

It is hereby stipulated and agreed by and between the above-named libelants, through their respective proctors, and the above-named claimant and respondents, through their respective proctors, that the testimony and evidence of O. S. Wickland this day taken before Edw. C. Judd, of Astoria, Oregon, a notary public, shall not be signed by said O. S. Wickland, being inconvenient for said witness to sign the same, and that the same may be certified to by the said Edw. C. Judd, as notary, before whom the said [100] testimony and evidence was taken, the same as if actually signed by and subscribed by said witness, and that the same shall have the same force and effect as if actually subscribed to by such witness, and no objection shall be made to the offer or receiving or reading of said deposition of said witness in evidence because of the fact that the same was not subscribed by him, and that the same may be received and read in evidence at the trial of the above-entitled cause in the above-entitled court, or such other court, as the said cause may be heard, the same as if the

same had been actually subscribed by such witness.

Dated at Astoria, Oregon, this 20th day of March,
A. D. 1917.

IRA S. LILLICK,

FRANK SPITTLE,

Proctor for Libelants.

McCUTCHEN, OLNEY & WILLARD,

By G. C. FULTON,

Proctors for Respondents and Claimants. [101]

*In the Southern Division of the United States Dis-
trict Court, for the Northern District of Califor-
nia, First Division.*

IN ADMIRALTY.

STEAMER AVALON COMPANY,

Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle, Ap-
parel, Furniture and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpora-
tion,

Claimant.

J. L. CHRISTENSEN, J. CARLSON, W. J.
BECK, P. RODLAND, A. LINDBERG,
CARL LINDBURG, H. PETERSEN, T. G.
ECKHART, OTTO ANDERSEN, A. AEL-
FORD, N. SAASTED, H. MILLER, NICK
MATHIESON, A. RAJAHN, L. CHRIS-

TENSEN, K. LARSEN, OLE ANDERSON,
H. ANDERSON, JULIUS STROM, TAL-
BERT PREWETT, JOHN GAILEY, FRED
LUNDIN and AUG. LOWREYS,

Libelants,

vs.

HUBBARD STEAMSHIP COMPANY, a Corpora-
tion, and HAMMOND LUMBER COM-
PANY, a Corporation,

Respondents.

Deposition of O. S. Wickland, for Respondent.

BE IT REMEMBERED that on Tuesday, the 20th day of March, 1917, pursuant to the stipulation hereunto attached, there appearing before me, Edw. C. Judd, a notary public in and for the State of Oregon, being the same party named in the stipulation as Edwin Judd, at my office at Astoria, Clatsop County, Oregon, the libelants herein, by their proctor, Frank Spittle, Esq., and the claimant and respondents by their proctor, G. C. Fulton, Esq. There also at the same time and place appeared before me O. S. Wickland, being the same party named in the stipulation as O. B. Wickland, a witness on behalf of claimant and respondents, who being by me first duly cautioned and sworn to tell the truth, the whole truth and nothing but the truth, testified as follows, that is to say: [102]

(Interrogated by Mr. G. C. FULTON.)

Q. State your name, age, residence and occupation.

A. O. S. Wickland; age, 48; residence, Hammond,

(Deposition of O. S. Wickland.)

Oregon; occupation, Keeper of U. S. Coast Guard.

Q. At what point is your station located?

A. Three-quarters of a mile southeast of the Ft. Stevens Military Reservation.

Q. In the State of Washington?

A. In the State of Oregon.

Q. What position do you occupy in this Coast Guard?

A. I am in charge of the station; keeper of the station.

Q. How long have you been such keeper?

A. Twenty-one years.

Q. At this same location?

A. No, I have been keeper of this station for nineteen years.

Q. How long have you been in the Coast Guard?

A. Twenty-six years.

Q. What occupation did you follow prior to entering the Coast Guard Service?

A. Fisherman and sailor.

Q. What experience have you had as a sailor?

A. I have been sailing since I was a little boy. I might say from the time I was nine years old, with the exception of the time spent at school. I spent all my life at sea.

Q. Whom were you sailing with in your youth?

A. I sailed for a time with my dad and with my stepdad.

Q. What positions did they occupy on the vessel?

A. Both masters.

Q. Are you a master mariner? A. No, sir.

(Deposition of O. S. Wickland.)

Q. How many years have you actually followed the sea?

A. Altogether from the time I was fourteen years until I was twenty-one, I might say, I followed the sea.

Q. From what ports have you sailed? [103]

A. Mostly from ports in the Scandinavian country.

Q. To what ports?

A. Most all the ports of Scandinavia and Great Britian as well.

Q. Were you keeper of the Coast Guard Station you have just mentioned on the 24th and 25th days of July, 1916? A. Yes, sir.

Q. Did you see the steam schooner "Avalon" about that time?

A. On the 25th; yes, sir.

Q. 25th of July, 1916? A. Yes, sir.

Q. What vessel, if any, had she in tow at that time? A. The "General Hubbard."

Q. State in your own way, Captain, where you first saw these two vessels and describe the character of the weather and conditions what your observations were in regard to their movements.

A. As near as I can remember, the surfman on watch at the station reported at two o'clock P. M. that the "General Hubbard" hove in sight in tow of a steam schooner. The weather was clear at times, with occasional rain squalls.

Q. What did you do then, if anything?

A. Well, knowing that the "General Hubbard"

(Deposition of O. S. Wickland.)

had left the previous day for the south, I felt kind of uneasy because I knew there was something the matter with her when she hove in sight again, so I reported the matter to the Hammond Lumber Company.

Q. What I mean, what did you do, whether or not you went on the jetty to make further observations?

A. I didn't make any further observations because she was coming towards the bar.

Q. Did you observe it towed across the bar?

A. Yes, we could see she was in tow. I didn't personally, but the watchman reported to me.

Q. Did you see the steamer "Avalon" tow the "Hubbard" across the bar? A. Yes.

Q. About how wide is the Columbia River Bar at the mouth of the Columbia River? [104]

A. I couldn't say, Mr. Fulton, how wide the bar or the channel is. The chart will show that. I wouldn't want to make a statement because I might make a mistake.

Q. What are the facts in regard to the channel, that is, does the channel occupy practically all the space between the two jetties?

A. Not exactly. The channel doesn't occupy quite as large a space as that. There are spits on the north as well as the south jetty.

Q. What width are the spits?

A. I wouldn't like to say. I imagine the channel is more than a mile, between a mile and a mile and a half.

Q. Through what portions of the channel was this

(Deposition of O. S. Wickland.)

tow made? A. Through mid channel.

Q. Through the mid channel, you say?

A. Yes, sir. As far as I was able to make out.

Q. What was the stage of the tide, as you remember?

A. The current was still running out when she came in, but if I am not mistaken the tide was rising.

Q. From the observations you made at the time, did the "Avalon" have any difficulty making the tow? A. She did not appear to have.

Q. From the positions occupied by the "Avalon" and "Hubbard," what is your judgment as to whether or not either vessel was in any peril during the tow?

A. So far as I am able to understand, I couldn't see any particular peril.

Q. You use the word "particular."

A. We use that a great deal; maybe we shouldn't. I couldn't see that either of them was in any peril.

Q. Please describe the condition of the bar at the time. What, if any, crafts were navigating it,—if so, the character.

A. There were a number of small fishing boats.

Q. Going out mostly or coming in?

A. Coming in because the tide was turning and there was a little [105] swell on the bar, but it didn't seem to be any danger in going out or in over the bar for any sized vessel, so far as I was able to understand.

Q. Speaking of fish boats, what are their dimensions?

(Deposition of O. S. Wickland.)

A. All the way from twenty-five to thirty feet long.

Q. Operated by power or otherwise?

A. Operated by power, yes, sir.

Q. Mostly gasoline? A. Yes, sir.

Q. Were you on the bar at the time?

A. I didn't go as far as the bar; no.

Q. Did you meet the "Avalon" and "Hubbard"?

A. Near the end of the south jetty which is right inside the bar.

Q. Near the end of the south jetty? A. Yes.

Q. What was the condition of the sea and bar at that time? A. We call it a moderate sea.

Q. What character of craft were you in?

A. In the life-boat. Our life-boat.

Q. You experience any difficulty in navigating the water? A. Indeed not.

Q. About how many fish boats were navigating the bar at that time?

A. I couldn't state the number. There were a number of them.

Q. Where is Cape Meares lighthouse?

A. As far as I know, it is between three and five miles south of the entrance to Tillamook Bay. I am not quite sure as to that. The chart will show the exact place, I think.

Q. You know what communication Cape Meares has as to telegraph or telephone lines?

A. No, sir; I do not know.

Q. What are the facts as to whether or not it is your duty to observe vessels navigating across the

(Deposition of O. S. Wickland.)

bar both from sea and to sea?

A. It is our duties to observe.

Q. You have been following that for about nineteen years? [106]

A. For twenty-six years all together. I was surferman at the station for five years before.

Q. Taking into consideration the character of the tides, winds, and currents at the mouth of the river and bar, and the character of the sea at the time the "Avalon" towed the "Hubbard," at the time in question, what would you say, Captain, as to whether or not the seal conditions were favorable or unfavorable to a tow?

A. In my opinion the conditions were not at all unfavorable. I would call them favorable. Of course, it must be understood, I have seen better weather, because it was squally occasionally but as to conditions when vessels pass out and in we see them going out with vessels under more trying conditions.

Q. What I want to get is whether or not conditions were favorable or unfavorable?

A. In my opinion favorable.

Q. These squalls you speak of were they severe or light? A. They were not severe.

Q. In your judgment the squalls that prevailed that day have any effect on towing at all?

A. I didn't think it would have to any great extent.

I think that is all.

(Deposition of O. S. Wickland.)

(Interrogated by Mr. FRANK SPITTLE.)

Q. Captain Wickland, where were the "Avalon" and "Hubbard" when you first saw them?

A. About ten miles offshore, we were judging, about ten miles. In the southwesterly direction from the north jetty.

Q. And from the time you personally went out in the life-boat, they were then coming in over the bar, were they?

A. Yes. Not when we left the station they weren't up to the bar, but when we got there they were coming in over the bar.

Q. Do you know *exactly stage* of the tide it was when you met them at the bar?

A. I couldn't state exactly what stage of the tide it was, but we [107] met them between three and four o'clock, I think, as near as I remember. It was ebbing a little.

Q. It was still on the ebb?

A. The current was running out, but the current runs out after low water sometimes three and four hours.

Q. At that time, wasn't there quite a freshet in the river?

A. Yes, there is always a little freshet, not such a great deal.

Q. Now, are you testifying of July 25th, 1916?

A. Yes.

Q. There was quite a good deal of freshet at that time?

A. It might have been, yes, sir. There is always

(Deposition of O. S. Wickland.)

more or less freshet at that time of the year.

Q. What time of day you say you met them there?

A. As near as I remember, it must have been between three and four o'clock.

Q. Will you look at that tide-table? Tell me what time low tide was that afternoon.

FULTON.—I presume that the book, such as it is, or whatever it is, can speak for itself. I therefore object to the question unless the book is offered in evidence.

SPITTLE.—I simply offered that to refresh his memory.

A. That was 3:55. I couldn't say to the time, it might have been later. I couldn't say exactly to the *tide* I met the people, I suppose there is a record at the station, but I didn't want to go into the station records. Let me see; we returned to the station, if I am not mistaken, at six o'clock that evening. I took a message in for the captain, you know. It might have been later when we met her; I couldn't say.

Q. Well, then, the tide was still running out?

A. Yes.

Q. You say that when there is a freshet in the river that the tide runs out quite a while after low tide? A. Yes, it does.

Q. What causes a freshet? [108]

A. I have always understood that the snow in the mountains causes that.

Q. That is generally understood?

A. That is what I understand.

(Deposition of O. S. Wickland.)

Q. When snow is melting and there is a freshet in the river, how far offshore is that freshet felt?

A. I couldn't say. It depends on what direction you go from the river. If you go south of the bar a little distance, you don't feel it at all. If you go straight west, you feel it way beyond the lightship.

Q. Now, Captain, what are the prevailing winds at that time of the year?

A. It is generally northwest, but last year it was not so; it was mostly southerly winds.

Q. You know what the wind was on that day?

A. I think it was southwesterly.

Q. You remember where these squalls came from, what direction?

A. From the southwesterly direction, I think.

Q. Now, right off the bar where current sets out, what is the direction of the coast current?

A. The coast current in the summer-time generally follows the wind. If it is northerly wind the current sets south and if it is southerly wind the current sets north.

Q. Now, you say that when the "Avalon" came in with her tow, they were approximately in the middle of the channel?

A. As far as I was able to understand, yes.

Q. You say there was a moderate sea?

A. Yes.

Q. What was the rate of the wind at that time that afternoon?

A. Well, I couldn't state exactly the velocity of the wind, but it was not very strong.

(Deposition of O. S. Wickland.)

Q. Are you familiar with the Beauford scale of winds? A. Yes.

Q. What number would you say it was that afternoon? [109]

A. Well, I would say from one to three.

Q. It wouldn't be above three?

A. No, I wouldn't swear to that, Mr. Spittle, but I think that was about what we would rate it.

Q. Take the squalls, what was it?

A. About that time it would be three. When the squalls were not coming in, it was almost calm at the station.

Q. I mean at the bar?

A. I couldn't tell you.

Q. When you were at the bar and met the "Hubbard" and "Avalon" coming in, what was it?

A. About the same.

Q. Now, you say, Captain, that the channel is approximately a mile wide at the south jetty?

A. Well, I stated that, but I didn't want my judgment of that taken for granted. The chart will show exactly. I could only refer to the chart in case of that kind.

Q. Tell me what the jetty from the end, there for a considerable distance, we will say two miles from the end of the jetty consists of, or did consist of at that date.

A. The jetty consists of rock. Rock and piling, of course.

Q. Well, that piling at the present time and at that time, what was the condition of it.

(Deposition of O. S. Wickland.)

A. For a considerable distance from the end of the piling, the piles was gone. It has been thrown away, but very little left and rock has been scattered.

Q. What is left is piles of rock?

A. Mostly under water.

Q. What from your knowledge of the general conditions, what would be the danger in towing a vessel in from the—we will say, from No. 4 Buoy up to within a mile inside of the mouth of the jetty, on the day in question?

A. Well, from No. 4 Buoy, I could not see any danger at all. [110]

Q. What would be the danger generally at any time towing in? What would the danger consist of?

FULTON.—I object to that as not competent nor within the issues.

A. No. 4 Buoy is inside of the end of the jetty and I don't know that there is any danger at all.

Q. No. 4 Red Buoy, is that inside of the jetty?

A. Yes. No. 4 Buoy is way inside of the jetty. Almost in the bay.

Q. Then I wouldn't say that. From the first red buoy outside the mouth of the jetty, possibly the chart I saw didn't have the same numbers, the first little buoy outside the mouth of the jetty, what would be the danger of towing in?

FULTON.—I object to that as immaterial and not within the issues.

A. Under favorable weather conditions I don't see that there is any danger at all, but in very heavy

(Deposition of O. S. Wickland.)

seas, there would be danger of parting the hawser, and there would be danger of the towing vessel losing her propeller in the same manner as the "General Hubbard" lost hers.

Q. In case it would happen, then what would happen to the ship?

FULTON.—I object to that as incompetent and not within the issues.

A. They would have to depend on Divine Providence in a case of that kind.

Q. What would usually happen to the tow-boat or towing vessel by losing propeller?

A. Well, sir, the only way I could see, they would have to drop anchors and await aid from some other vessel.

Q. What danger would there be?

A. There would be danger of drifting, they would drift out as a general rule. It has happened, that they have lost their towing cable and drifted out over the bar, and drifted to either side, either to north or south and drifted into Peacock Spit, but as conditions were at that time, I don't know what the result might have been. [111]

Q. With a southwest squall blowing and a current such as it was at that time, if the hawser had parted or the tow vessel "Avalon" had lost her propeller, what, in your opinion, would have happened to one or either of the vessels?

FULTON.—I object to that as immaterial and incompetent.

A. I imagine that they would have to drop anchor

(Deposition of O. S. Wickland.)

and wait assistance from another vessel, if they had used proper seamanship both of them, so far as I am able to understand.

Q. Supposing anything happened so that they couldn't drop anchor. If conditions were such that they could not drop anchor?

FULTON.—I object to that as incompetent and immaterial and assuming what did not exist.

Q. I want to know what the danger consisted of, assuming that the tow hauser had parted and that the towing vessel had lost her *vessel*, what would the danger consist of under those conditions with a southwest squall blowing?

A. Well, I really don't know what to say, Mr. Spittle. I don't think there would be any particular danger. They could have dropped their anchors and waited assistance from another vessel. There are so many things that could have happened, I can't quite explain to you.

Q. Wouldn't there be danger of one or both vessels piling up on Peacock Spit?

A. Such a thing could have happened.

Q. They have piled up on such conditions?

A. No, not under those conditions. The "Rosecran" piled up there.

Q. Now, what is the velocity of the current at the stage of the tide and when there is such a freshet in the river as there was on the 25th of July, 1916?

FULTON.—I object to that as immaterial.

A. What were the conditions you say?

Q. What was the velocity?

(Deposition of O. S. Wickland.)

A. When we met the "General Hubbard" the velocity wasn't very great because she was making fair headway at that time. [112]

Q. You say when you met her she was inside the bar? She had crossed the bar? A. Yes.

Q. You couldn't see her when she was crossing in? A. Yes.

Q. Did you notice whether or not they were laboring at that time?

A. I have to try to explain that to you, Mr. Spittle. When we came alongside of the vessel she was not very far from No. 4 Buoy, that is considered one of the worst places in going out there under ordinary conditions, and she was not laboring heavier than when we went alongside and took a letter from the captain of the "General Hubbard," you may imagine how she labored. We went alongside with a power boat and they lowered the letter.

Q. How did they lower the letter?

A. Just lowered with a piece of iron attached to it and line.

Q. Now, when you first came in sight of them. Do you know which way the "Avalon" was headed, what direction, when you first came in sight of her?

A. She then seemed to be heading up towards the hills.

Q. Did you see them come over the bar before you met them? A. Yes.

Q. For how long a distance out?

A. We couldn't see while we were past Ft. Stevens; there was a while we couldn't see them on

(Deposition of O. S. Wickland.)

account of the jetty and jetty sands being between us.

Q. When you first saw them, how far away were they approximately?

A. When we were to the jetty sands, they were perhaps four miles away.

Q. In what direction then was the "Avalon" headed?

A. Well, I cannot remember any other way than heading in. I cannot remember whether she was heading any other way. I didn't pay any particular attention.

Q. Could you say whether she was headed north-erly or southerly?

A. I think she was headed towards the north before she came over [113] the bar.

Q. Did you notice the "Hubbard" which way she was headed?

A. No, not particularly. When we came along-side she was steering behind the other one.

Q. Coming over the bar, how were they headed?

A. Coming over the bar, I suppose they were headed upstream.

Q. I mean, was the "Hubbard" headed the same way as the "Avalon"?

A. She must have been or the "Avalon" couldn't get her in.

Q. Did you notice at any time whether the "Avalon" was headed one way and the "Hubbard" was sheering another way?

A. Not any more than is customary for a loaded

(Deposition of O. S. Wickland.)

ship to always sheer a little to either side. That is natural for a loaded vessel to do. I didn't notice anything particularly, Mr. Spittle. I want to be frank and tell the truth.

Q. I will ask you if on that day the condition of the river was not in what is known by mariners on the Columbia River and bar as "all run out and no run in"?

A. No, it couldn't have been that way because it was flood when the vessels passed the station.

Q. But the station is how far inside?

A. About six or seven miles.

Q. I mean at the time they crossed the bar.

A. It was running out then some.

Q. You know how much water there was in the river above normal? A. I couldn't state, sir.

Q. Approximately how many feet?

A. In the channel?

Q. In the channel.

A. I couldn't state exactly, Mr. Spittle, but I think the Government engineer reported some thirty-five or more feet.

Q. Above normal?

A. No, I thought you meant depth.

Q. I meant amount of flood?

A. When she crossed the bar, it must have been just about low water. [114]

Q. Now, Mr. Fulton asked you about fishing boats. You say the fishing boats are about twenty-six to thirty feet long.

A. You know just about as much about the Colum-

(Deposition of O. S. Wickland.)

bia River fish boats as I do.

Q. What kind of sea boat are they?

A. They are considerable good sea boats.

Q. Fish boats will go out in practically any sea?

A. I should say not—God sakes, no. That is all right in the river, but not in the sea.

Q. If they were outside, they could stand practically any sea?

A. They stand a good sea, but not any sea, Mr. Spittle.

Q. Fishermen do go out with them in the summertime, outside the bar?

A. Yes, providing the bar is not breaking.

Q. During the last few years that has been regular custom for a number of the fishing boats to go outside the bar and troll? A. Yes.

Q. That was what you went out for? That is, look after them?

A. No, we didn't go to look after them. We just went out to see what was the matter with the "General Hubbard." We were requested by someone from the Hammond Lumber Company to go and see what was the matter with her. They knew there was something the matter or she would not come back.

Q. I think that is all.

(Mr. FULTON.)

Q. The south jetty does not extend to the bar?

A. Not exactly as the bar is now, Mr. Fulton.

Q. On this day in question you say there was a prevailing southwest wind?

A. As far as I am able to remember, yes.

(Deposition of O. S. Wickland.)

Q. What direction then would have been the ocean current?

A. From the fact that the wind was from the southerly or southwesterly direction, the ocean current must be going in the same direction. [115]

Q. Would the northerly set of the current in the ocean extend to the bar?

A. Yes, the ocean current is outside of the bar.

Q. Would there be a northerly set to the current in the bar as it was a northerly set to the current in the ocean?

A. It might; I couldn't tell as to that.

Q. Then if there being a northerly set to the current in the ocean with a southwest wind on this day, if any accident should have happened to the "Avalon" or "Hubbard" and neither of them happened to have an anchor, these vessels would have drifted northerly instead of southerly? A. Naturally.

Q. There were sea-going tugs at Astoria at this time?

A. I couldn't say exactly, but there must have been. As a general rule, they always have a tug.

Q. What communication, if any, existed at that time between your station and Astoria?

A. There is a telephone service between the pilot office and the station.

Q. If any accident should have happened to either tug or the tow, you had direct communication with the pilot office at Astoria? A. Yes.

Q. What headway was the "Avalon" making when you first saw her—normal or otherwise?

(Deposition of O. S. Wickland.)

A. Well, I couldn't say as to that Mr. Fulton. She was making fairly good headway.

Q. After the "Avalon" crossed the bar, what would you say, headway being normal or otherwise?

A. I couldn't state what *there* speed would be.

Q. But she was doing well?

A. I couldn't say. I know when we went alongside we slowed down some, quite a bit, and our power boat makes, I presume, about seven or eight. [116]

Q. Did you observe any indication on the part of the "Hubbard" to drift or sheer out of the ordinary?

A. No, sir.

Q. That is all.

(Mr. SPITTLE.)

Q. How many sea-going tugs are there in Astoria?

FULTON.—You mean were there?

A. There are two connected with the port of Portland.

Q. You know how many were in commission at that time, do you? A. No, sir.

Q. Isn't it a fact that in the summer-time there is *one* one tug in service?

A. As a general rule, they keep two, having one generally kept down at the mouth of the river.

Q. Was there a tug at the mouth of the river?

A. I don't think there was at the mouth of the river. I don't remember. At least I didn't observe any.

Q. Now, under the conditions Mr. Fulton stated a moment ago, with a northerly set of the current, assuming that they were in such a condition that they

(Deposition of O. S. Wickland.)

would be drifting, would one or the other one pile up on North Beach or Peacock Spit?

A. It depends on where they were, Mr. Spittle. When I met the "Hubbard" and "Avalon," the ocean current had no effect on the river current.

Q. When they were crossing the bar?

A. If anything should happen, such a thing could have happened I suppose. But with a strong ebb tide as it was at that time, they would drift out clear of the bar. I would like to cite an incident. When the "China Junk" came in in tow of a steam schooner she parted her hawser inside the bar and the "China Junk" drifted out of the bar to the northerly end and they dropped anchor and the schooner went out and picked her up next day.

Q. What was the condition of the "China Junk"?
[117]

A. She wasn't ruined. I wouldn't express my opinion even as to that.

That is all. [118]

United States of America,
District of Oregon.

I, Edw. C. Judd, Notary Public in and for the State of Oregon, being the party named in the stipulation hereunto attached, as officer to take deposition of O. B. Wickland, hereby certify that pursuant to the stipulation hereunto attached there appearing before me on this day, Tuesday, March 20th, 1917, at the hour of ten o'clock A. M. the libelants through their proctor, Frank Spittle, Esq., and the claimant and respondents through their proctor,

C. C. Fulton, Esq., and on said date and at said time being attended by the proctors aforesaid, the within named witness O. B. Wickland, whose true name is O. S. Wickland, being the identical person described in the stipulation as O. B. Wickland, was by me carefully examined, cautioned and sworn to testify to the truth, the whole truth and nothing but the truth, and the testimony by him given was by me reduced to writing; that said testimony was taken in shorthand in my presence and in the presence of the witness, and in the presence of said proctors, entered into an agreement hereunto attached, and said witness being unable to remain sufficient length of time to have testimony typewritten, it was stipulated that the same should be considered his testimony and evidence, as if personally signed, and consequently his name is not signed to such testimony, but that the foregoing is the truth, the correct testimony and evidence given by said witness, and the whole thereof. That I am not counsel or attorney to either of the parties, nor in any way interested in the event of the cause named in said caption.

IN TESTIMONY WHEREOF I have hereunto set my hand and notarial seal this 20th day of March, A. D. 1917.

[Seal]

EDW. C. JUDD,

Notary Public for Oregon.

My commission expires March 1st, 1921.

[Endorsed]: Filed Mar. 26, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [119]

*In the United States District Court for the Southern
Division of the Northern District of California,
First Division.*

Before Hon. MAURICE T. DOOLING, Judge.

No. 16,075.

STEAMER AVALON COMPANY,

Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
etc.,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

No. 16,110.

J. L. CHRISTENSEN et al.,

Libelants,

vs.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration, et al.,

Respondents.

Testimony Taken in Open Court.

MONDAY, MARCH 26, 1917.

COUNSEL APPEARING:

For the Libelant: IRA S. LILLICK, Esq.

For the Respondent and Claimant: IRA A. CAMP-
BELL, Esq., and Messrs. McCUTCHEN,
OLNEY & WILLARD.

The COURT.—Will the testimony in this case be transcribed?

Mr. LILLICK.—This case will not be referred, your Honor. It is a salvage case. I would like the testimony written up, and, no doubt, Mr. Campbell will want it, too.

The COURT.—The only question is whether I shall take notes of the testimony.

Mr. LILLICK.—Oh, no, your Honor. The testimony will be written up. There is but one case on the calendar, Steamer Avalon Company [120] vs. The American Steamer “General Hubbard”; there is, however, at issue and before the Court a suit by the master and the crew of the steamer “Avalon” vs. the Hubbard Steamship Company, and although I have not taken it up formally with Mr. Campbell, I have understood that someone has taken it up with your office, Mr. Campbell, and that it is agreeable to you that both cases be heard at the same time.

Mr. CAMPBELL.—Yes, they should be consolidated.

Mr. LILLICK.—Yes, the two cases can be consolidated.

The COURT.—Let that order be made.

Mr. LILLICK.—The case has arisen, if your Honor please, out of a situation where the steamer “Hubbard,” between twelve and fourteen miles off-shore, about opposite the Cape Meares lighthouse, broke her crank-shaft and was left without any means of propulsion, having no sails, having no wireless with which to call for help, and with a full cargo of lumber, the cargo consisting not only of an under

deck cargo but also a deck cargo, some sixteen feet high on her deck.

The testimony that we expect to put before your Honor will show that the vessel, after having broken her crank-shaft—the “General Hubbard,” in calling for help sent up first some rocket signals and also played her searchlight in the sky, so that any vessel that might be near might come to her assistance.

The “Avalon” was proceeding up the coast, and on the inside, about four or five miles from shore. Seeing the rockets and the searchlight playing, the “Avalon” changed her course, she was light, proceeding north to Willapa harbor, and went to the assistance of the “Hubbard.”

After arriving at the “Hubbard,” she found her lying in the trough of the sea, unable to keep her head up either to the sea or the wind, although the wind was only practically a light [121] breeze.

The owners of the “Hubbard” and the cargo upon her claim that she was in no danger and that it was a towage service that was subsequently performed by the “Avalon” taking her in tow and proceeding to Astoria.

The “Avalon” came in sight of the rockets at about 12:20 in the morning of July 25, 1916; the tow was made up and the lines fast at about 2:30 in the morning. The “Avalon” then proceeded and towed her up to the mouth of the Columbia River, and when she arrived at the bar, in attempting to cross the bar into the Columbia River, found that the freshets caused by the melting snow in the mountains

had raised the river to a point some 22 feet above normal, and as one of the witnesses put it, it was all flow out and none in, in other words, there was no tide coming in. The "Avalon" had a good deal of difficulty in getting the "Hubbard" in and over the bar; that as one of the witnesses put it, it took half an hour, I believe, to make a mile. Subsequently, the captain of the steamer "Hubbard" drew up an agreement in which he named the service performed by the "Avalon" as a towage service. It is the contention of the defense here that it was only a tow and not a salvage service.

I desire, before putting in any evidence, to obtain the permission of the Court to amend both of the libels. I am representing not only the Steamer Avalon Company, but the master and the crew of the "Avalon," and incidentally I might mention that it is the contention of the owners of the "Hubbard" and her cargo that the master and the crew of the steamer "Avalon" have assigned their interests in this salvage to the owners of the steamer "Avalon." Exceptions were argued before your Honor on some interrogatories attached to the answer of the Hubbard Steamship Company, and the libel filed by the master and the crew of the [122] steamer "Avalon," asking that we be required to state to respondents whether or not the master and the crew had assigned their interests to the owners of the "Avalon." The exceptions were overruled, with the exception of one of the interrogatories, which interrogatory the respondents asked—

The COURT.—What you were going to get for it.

Mr. LILLICK.—Yes, your Honor, what we were going to get for it. I see that your Honor has a very good memory. Your Honor sustained that. There is, however, in the testimony of the captain of the “Hubbard” a statement that the crew were paid one-half a month’s salary for that salvage. I think I had better take this point up now before proceeding with the case, because it will save difficulty hereafter in the testimony.

I know your Honor will pardon my statement that I think your Honor was in error in not having overruled the objections, but I think that was due, perhaps, to the manner in which it was presented to your Honor. As a matter of fact, it makes no difference whether the owners of the “Avalon” entered into any agreement with the master and the crew of the “Avalon” under which agreement the master and the crew assigned over to the “Avalon” their interest in the salvage, because such an agreement is invalid, it is not good. We are not concerned here with how much, if anything, the owners of the “Avalon” paid the master and the crew for that service. I am here representing the owners of the “Avalon,” and I am also here representing the crew, and under a situation where, when this case first started, the owners of the “Avalon” obtained from the master and the crew an agreement under which—and, by the way, that is attached to the answers to the interrogatories which your Honor required us to file—I say, the master and the crew of the steamer “Avalon” agreed to do everything they could to aid and abet us in obtaining as high a salvage award as pos-

sible. [123] If your Honor cares for the citation of any authorities upon it, I don't know how far this is going to go from the standpoint of the other side, apparently the suggestion was made in good faith to the Court that an agreement was made between the owners of the "Avalon" and the master and the crew under which, for one-half a month's salary, one-half a month's wages, the master and the crew of the steamer "Avalon" assigned their interests to the owners of the "Avalon." Neither the "General Hubbard" or her owners, nor the owners of the cargo, have anything whatever to do with that. That is a situation in which the master and the crew of the "Avalon" are involved, upon the one side, and the owners of the "Avalon" are involved upon the other. They have an agreement, which agreement is attached to the interrogatories, under which, after this case is ended, after this Court has made an award, or as was contemplated then, the owners of the "Hubbard" and the owners of the "Avalon" had agreed upon a sum to be paid to the "Avalon" for her service, the crew and the owners of the "Avalon" should attempt to arrange amicably between them the amount that should be paid to the crew, or, if unable so to agree, that the master and the crew should have the right to employ independent counsel. That situation is still in effect. However, as I said in prefacing this, it is not for the owners of the "General Hubbard," or the owners of the cargo on the "General Hubbard," to take exception to anything that has been done. An agreement, if such agreement has been made, in which a part of the

compensation which the Avalon Company expected to receive and will receive from the "Hubbard" and her cargo for this service is or already has been paid to the master and the crew, that does not entitle the Steamer Avalon Company to rest upon that; the crew and the master have a right to disregard the [124] amount that has been paid them, if anything, and collect from the Steamer Avalon Company whatever the Court will award to them. And I ask the Court, in carrying this case on to a conclusion, and when deliberating upon the testimony in the case, to make a separate award, not only specifying the master and the crew of the steamer "Avalon" with the proportion as will be ultimately determined from the wages paid to them that is due to them for their part in this salvage, and a separate award for the Steamer Avalon Company.

I desire to ask permission of the Court to file an amendment to both libels, in which the values of the two vessels are changed and in which also the freight on the cargo of the "Hubbard" may be asked to participate in the salvage. That amounts to, I think, so far as the freight is concerned, but very little. With the Court's permission I will file these two amendments.

Mr. CAMPBELL.—We do not consent to the making of the amendments.

The COURT.—Are those just as to values?

Mr. LILLICK.—Not only the values, but also the freight. I have asked to amend paragraph 9 of the libel by inserting the words "and freight" after the word "cargo" on line 5, page 4 of said libel. The salvage award would have, as a part of it, a propor-

tion of the value of the freight, so far as that freight was earned upon the voyage that the "Hubbard" commenced from the Columbia River down to the point where she became disabled; I don't know what that would amount to; it would amount to but very little. It does not put the defense here in a situation where they are taken by surprise. I didn't know this, Mr. Campbell, when I telephoned to you on Saturday, it was another afterthought.

Mr. CAMPBELL.—I simply am not consenting to the amendment. I presume probably the Court will allow the amendment. I do not want [125] to be in the position of consenting to the amendment as to these values. I think the Circuit Court of Appeals of this circuit,—either a case from this district, or from Oregon, or from Washington, held in a salvage case, the Pacific Coast Steamship Company vs. Perry, where a British sailing vessel by the name of "Nelson" went out of the Columbia River and became disabled offshore and was subsequently towed by one of the Pacific Coast vessels, either back into the Columbia River or to Puget Sound, the Court held there that there had been no freight earned on that voyage, because the voyage had practically just commenced. I think that the element of freight was not taken into consideration in allowing the salvage.

Mr. LILLICK.—Well, then, from Mr. Campbell's statement just made, your Honor, it is a question of law.

The COURT.—The amendment will be permitted.

Mr. CAMPBELL.—May the record show that we have denied the allegations of the amendment?

The COURT.—Yes.

Testimony of W. S. Burnett, for Libelant.

W. S. BURNETT, called for the libelant, sworn.

Mr. LILLICK.—Q. What is your connection with the Hubbard Steamship Company, the respondent?

A. At the time in question and since then, I have been merely a director of the Hubbard Steamship Company, and its general counsel.

Q. And your connection with the Hammond Lumber Company at the time the salvage service was performed was what?

A. I was vice-president of the Hammond Lumber Company, a New Jersey corporation.

Q. As a director of the Hubbard Steamship Company, and not as its [126] attorney, Mr. Burnett, were not negotiations pending for the sale of the steamer "General Hubbard" upon July 25, 1916, when this salvage service was performed?

A. Certainly no negotiations were pending which ultimately resulted in her sale. There may have been negotiations at that time, as you know the market was one of intense excitement about that time, both prior and afterwards.

Q. The steamer was, however, sold within a short time after that, wasn't she?

A. She was finally sold; I think it was in October that the title passed, as I recall.

Q. In October? A. Yes.

Q. Who were the purchasers, Mr. Burnett?

A. They were Norwegian parties; I think the name of Kjeld-Stub was the name of the purchaser appearing in the bill of sale.

(Testimony of W. S. Burnett.)

Q. When did the title pass?

A. At that time.

Q. In October.

A. About in October; I could not tell you exactly without looking at my file.

Q. Was it in the commencement of October, or in the latter part of October?

A. I cannot recall, but there is information from which I can refresh my memory. If I can suggest to you, Mr. Lillick, if you will pardon me for doing so, Mr. Stewart has these matters all in mind much better than I have, and I think myself you would rather have his testimony than mine.

Q. Thank you for the suggestion, Mr. Burnett. That is all.

Mr. CAMPBELL.—No questions.

Testimony of L. C. Stewart, for Libelant.

L. C. STEWART, called for the libelant, sworn.

Mr. LILLICK.—Q. Mr. Stewart, what is your connection with the Hubbard Steamship Company?

A. Vice-president. [127]

Q. Were you vice-president in July, 1916?

A. Yes, sir.

Q. What negotiations, if any, were pending for the sale of the steamer "General Hubbard" in July, 1916?

A. The market at that time was very active; I don't know of any definite negotiations.

Q. You had offers for her, did you not, in the month of July, 1916?

(Testimony of L. C. Stewart.)

A. We had offers about that time; yes.

Q. What were those offers?

A. One was \$375,000 for delivery of the vessel in the Atlantic Ocean, on the Atlantic seaboard.

Q. And another was what?

A. In the Atlantic.

Q. And another?

A. That is about all I can recall.

Q. When did your negotiations commence with the Norwegian firm that subsequently purchased the "General Hubbard"?

A. On August 28th, 1916.

Q. She was subsequently sold to this Norwegian firm? A. Yes, sir.

Q. And at what figure?

Mr. CAMPBELL.—For the purpose of the record, we object to this as being immaterial.

The COURT.—The objection is overruled.

A. \$463,125.

Mr. LILLICK.—Q. In cash, or on terms?

A. In cash.

Q. \$463,125 in cash? A. Yes, sir.

Q. Mr. Stewart, you are acquainted with the prevailing rates for carriage of lumber on this coast, are you not? A. Yes, sir.

Q. And you were acquainted with the prevailing rates in July, 1916? A. Yes, sir.

Q. The "General Hubbard" was intended, primarily, as a lumber carrier, was she not?

A. Yes, sir, she was built for that trade.

Q. What was the prevailing charter rate per

(Testimony of L. C. Stewart.)

thousand for lumber from the Columbia River to San Francisco in July, 1916?

A. We were carrying lumber largely to the San Pedro market. [128]

Q. What were the prevailing rates to San Pedro from the Columbia River?

A. We allowed the "General Hubbard" \$6 a thousand on the voyage on which the accident took place.

Q. That was \$1 below the prevailing rate, was it not?

A. That was the rate she was committed on.

Q. Mr. Stewart, was not that \$1 below the prevailing rates at that time? A. Yes.

Q. Is it not the fact that the prevailing rate for the carriage of lumber from the Columbia River to San Pedro in July, 1916, was \$7 a thousand?

A. Yes, sir.

Q. And is it not also a fact that the prevailing rate for carrying lumber from the Columbia River to San Pedro in August, September and October, 1916, was \$7 a thousand? A. Yes, sir.

Q. When was the "General Hubbard" built?

A. She went into commission in January, 1911.

Q. How much lumber did she have upon her when she started upon this trip from the Columbia River in July, 1916? A. 1,646,910 feet.

Q. How long did it usually take the "General Hubbard" to make the voyage from the starting point from which she commenced the voyage in July, 1916, in which this salvage charge was ren-

(Testimony of L. C. Stewart.)

dered, to San Pedro? A. 4½ days.

Q. How long had she been out from port when her crank shaft broke?

Mr. CAMPBELL.—He was not there, Mr. Lillick, but that is already proved in the record.

A. Twelve hours.

Mr. LILLICK.—Then it may be admitted, Mr. Campbell, how far she had proceeded on her voyage.

Mr. CAMPBELL.—It won't be admitted. I say you have already proved it by your log-book.

Mr. LILLICK.—Q. Do you know where she was picked up?

A. I know from the affidavits of the master and the crew where she was. [129]

Mr. LILLICK.—And those are correct, are they, Mr. Campbell?

Mr. CAMPBELL.—I don't know. I have not seen them. I don't know that there is any dispute about that. It was 14 miles, practically, northwest of Cape Meares. That already has been proved by your depositions and our depositions.

Mr. LILLICK.—Then we could have saved time if we had the admission at once.

The COURT.—He said she was twelve hours out.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. CAMPBELL.—Q. In allowing the "General Hubbard" a \$6 freight rate as against a \$7 going freight rate, was she given any preferential treatment in dispatch—loading and unloading?

A. Yes, sir; we give our boats always a prefer-

(Testimony of L. C. Stewart.)

ence of 50 cents because of dispatch. The rate of freight advance early in June from \$6.50 to \$7. The "General Hubbard" was committed on a voyage at \$6.

Q. What do you mean by that—already chartered ahead? A. Yes, practically.

Q. Had her lumber been sold ahead of time based upon a \$6 freight rate?

A. Yes, and the lumber was awaiting the arrival of the vessel.

Q. What knowledge have you of any changes that were taking place in the months of August, September and October in vessel values on this coast? In other words, let me put the question this way: I don't know whether you have knowledge of this, or not, but can you say that an offer or a value that might be placed upon a vessel on the 15th day of August, 1916, was any criterion as to what she might have brought on the first day of September?

Mr. LILLICK.—I object to that as leading.
[130]

Mr. CAMPBELL.—Yes, I appreciate that.

Q. Have you any knowledge upon the question of the variation in values that was taking place at that time?

A. I have the knowledge only gained through association with shipping people.

Q. Did you sell some of your steamers during the fall of that year? A. Yes, sir.

Q. What one, for instance?

A. The steamer "Edgar H. Vance."

(Testimony of L. C. Stewart.)

Q. Do you know whether she was resold within a short period of time after you sold her?

Mr. LILLICK.—We object to that as irrelevant, immaterial and incompetent. We are not concerned with how often any other vessel was sold. There is no comparison between the two vessels.

Mr. CAMPBELL.—I think it is material in this way, it will show to the Court that there was such a rapid movement in the market for vessels, at that time that—

The COURT.—I suppose that is true. It is not one of those things that the Court takes judicial notice of, but I know everybody knows it to be a fact that values were rapidly advancing at that time.

Mr. CAMPBELL.—Yes. I was trying to get before the Court, if I could, a concrete case, other than this one, to show just how rapidly they did advance.

The COURT.—The objection is overruled.

Mr. CAMPBELL.—Q. Do you know of the resale of the “Vance” after she had been sold by you?

A. Only by hearsay.

Mr. CAMPBELL.—Well, that is all. I am going to call other witnesses on that point.

Redirect Examination.

Mr. LILLICK.—Q. You spoke, Mr. Stewart, of the charter rate [131] on the “General Hubbard.” She was chartered to one of your own companies, was she not? A. Yes.

Q. In other words, it was a working arrangement in the office? A. Yes.

(Testimony of L. C. Stewart.)

Mr. CAMPBELL.—Q. You run your departments separately, as though they were separate businesses entirely, do you not? A. Yes.

Mr. LILLICK.—Q. Mr. Stewart, what was the value of the cargo of lumber upon the “Hubbard,” which comprised the 1,646,910 feet?

A. The value at what point, Mr. Lillick?

Q. The value at her port of delivery in the south, San Pedro.

Mr. CAMPBELL.—We object to this as immaterial.

The COURT.—Let us get it at both ends.

A. The mill value was \$15,801.21; the freight was \$9,881.46.

Mr. LILLICK.—Q. And the value at San Pedro?

A. It would be a total of those two.

Q. Was that for what you sold the lumber at San Pedro? A. Yes, sir.

Mr. CAMPBELL.—Q. After this accident, was there any appraiser of the vessel's value employed to appraise the value of the “General Hubbard” as between the various interests of cargo and the ship and the insurers of the cargo and the insurers of the ship? A. Yes, sir.

Q. Who was that?

A. Captain Pillsbury.

Q. And this figure you speak of as the value at the mill, at what point is that?

A. At Astoria, Oregon. [132]

Testimony of R. A. Hiscox, for Libelant.

R. A. HISCOX, called for the libelant, sworn.

Mr. LILLICK.—Q. What is your connection with the Steamer Avalon Company?

A. I am secretary.

Q. Were you secretary of the company in July, 1916? A. Yes, sir.

Q. How long have you been connected with the company? A. Ever since it was formed.

Q. Was it formed about the time that the steamer "Avalon" was built?

A. Yes, sir; at the time she was completed.

Q. When was she completed, or about when, approximately? A. 1912, as I remember it.

Q. Do you remember her cost at that time?

A. Her cost was \$125,000.

Q. During the year 1916 was the Steamer Avalon Company at any time offered a price for the steamer "Avalon"?

Mr. CAMPBELL.—We object to that as immaterial, irrelevant and incompetent, for the reason that the president of the Steamer Avalon Company, Mr. W. H. Wood, who does not seem to be in court, has already sworn in his libel to a value of \$125,000 of the "Avalon."

Mr. LILLICK.—If your Honor please, at the time this libel was drawn—

The COURT.—The objection is overruled.

A. I do not know that I can say that we were definitely offered a price. During the year 1916 there were brokers from time to time who would call

(Testimony of R. A. Hiscox.)

up us and ask us whther we would consider a sale of the vessel at some stated price.

Mr. LILLICK.—Q. What were those stated prices? A. From \$200,000 to \$225,000.

Q. During the course of your business, and connected with the Avalon Steamship Company, as you have been during this time, [133] do you know of the values of vessels of similar types to that of the "Avalon" and sold in the market of San Francisco in 1916? A. Approximately; yes, sir.

Q. What, in your opinion, was the market value of the steamer "Avalon" in July, 1916?

A. I would say about \$200,000.

Cross-examination.

Mr. CAMPBELL. — Q. Market values were changing very rapidly during the latter part of 1916, for vessels of this type?

A. Yes, during the entire year of 1916.

Q. But they did not become active until the fall of the year, did they?

A. They became quite active along in June. Freight rates increased very rapidly during the first half of 1916, and reached their maximum in June, and have been maintained at about that same rate ever since.

Q. When were these offers that you received during the year 1916, do you recall?

A. Not definitely. We were offered, from time to time during the entire year, we were asked whether we would consider offers on our vessels, but we were not in a position to sell them.

(Testimony of R. A. Hiscox.)

Q. Mr. W. H. Wood is the president of your company, is he not? A. Yes, sir.

Q. He is also president of the Hart-Wood Lumber Company? A. Yes, sir.

Q. And this vessel is used almost entirely in carrying lumber for the Hart-Wood Lumber Company?

A. Yes, lumber that we sell.

Q. But carrying lumber under charter, or for the account of the Hart-Wood Lumber Company?

A. Yes, sir.

Q. And this vessel, I suppose, is owned on shares, in which there are other people interested?

A. That is correct. [134]

Q. The vessel was built under the supervision of the officials of the Hart-Wood Lumber Company?

A. Yes, sir.

Q. It was one of your promotion, was it not?

A. That is correct.

Q. And Mr. W. H. Wood was actively in charge of the management of this company in July, 1916, was he not? A. Yes, sir.

Q. There is no officer of either the Hart-Wood Lumber Company or the Avalon Steamship Company who was better informed as to the steamer "Avalon" and her value than Mr. Wood was?

A. No, I think not.

Mr. LILLICK.—If your Honor please, in certain portions of the testimony witnesses for both parties in this case have testified as to the course pursued by the captain of the "Avalon" in bringing the vessel into Astoria and reference has on several different

(Testimony of R. A. Hiscox.)

occasions been made to a red buoy as well as to a row of black buoys. For the purpose only of identifying that part of the channel at the mouth of the Columbia River, I offer this chart in evidence, it being a Government chart, and ask that it be marked Libellant's Exhibit No. 1.

Mr. CAMPBELL.—I have no objection to the chart so far as it may speak correctly, but until you have some evidence before the Court that buoy No. 4 on that chart is in the same position as buoy No. 4 was at the time of this accident the chart of course is valueless; I happen to know that those buoys are changed upon the Columbia River, and that at this time they were working with a dredger up there, the "Chinook" changing the configuration of the channel entirely.

Mr. LILLICK.—A map made prior to the time the one I am offering has the same row of buoys. I am not aware that they have been changed. Are you sure of that, Mr. Campbell?

Mr. CAMPBELL.—No, I am not. Just let me look at that [135] other chart. No. 4 buoy on one chart is twice the distance off the end of the jetty as the No. 4 buoy is on the other. That chart shows the projection of the north jetty. They are continually working on the extension of that north jetty. I know they had a dredger up there, the "Chinook" working on the extension of that jetty and that as that work progressed they changed the location of the buoys; I cannot say whether that is correct, or not.

Mr. LILLICK.—Then for the purpose of giving

(Testimony of R. A. Hiscox.)

to the Court a general idea of the mouth of the Columbia River—and I shall be very glad to have Mr. Campbell put in a chart, if he has one, showing that point—I desire to offer this chart in evidence and ask that it be marked Libelant's Exhibit 1.

(The chart was here marked Libelant's Exhibit 1.)

We offer in evidence the depositions of Jens L. Christensen and Peter Rodland, taken on Monday, October 16, 1916. I take it that your Honor would rather read these over later; that is, there is no use of taking the time to read them now.

The COURT.—Oh, yes. Nothing will be gained by reading them now. I will have to read them myself.

Mr. CAMPBELL.—We took the deposition of the captain of the life saving station at the mouth of the Columbia River. That chart shows buoy No. 4 is outside the end of the jetty and yet he says in the course of his deposition that buoy No. 4 is inside the mouth of the jetty. You cannot bank upon the accuracy of those buoys.

Mr. LILLICK.—I don't want the Court to understand that I am saying so. This is simply for a general idea of the situation there. I want to make myself clear on that.

The COURT.—I understand the situation. [136]

Testimony of Fred D. Parr, for Libelant.

FRED D. PARR, called for the libelant, sworn.

Mr. LILLICK.—Q. Mr. Parr, what is your business? A. Steamship business.

Q. How long have you been in the steamship business? A. Thirteen years.

Q. Mr. Parr, have you a general knowledge of the situation with reference to the prices obtained for steam schooners in the port of San Francisco during the year 1916? A. Yes, sir.

Q. Can you give us an example of a sale of a vessel somewhat similar to the "Avalon," if you know her, during 1916?

A. The steamers "Rosalie Mahony" and "Mary Olsen" were sold during 1916 for \$160,000 each.

Q. How did they compare in size with the "Avalon"?

A. About the same, although they were not in as good condition as the "Avalon" on account of having been carrying mahogany logs on the Atlantic side.

Q. When were those sales made?

A. About the middle of 1916.

Q. Do you know what month?

A. I have not the exact date, no.

Q. You know the steamer "Avalon"?

A. Yes, sir.

Q. What, in your opinion, was the market value of the steamer "Avalon" in San Francisco in July, 1916? A. \$175,000.

Q. Do you know the steamer "O. M. Clark"?

A. Yes, sir.

(Testimony of Fred D. Parr.)

Q. Was she sold in 1916? A. No, sir.

Q. Do you know the steamer "San Ramon"?

A. Yes, sir.

Q. Do you know when she was built in 1913.

Q. How did she compare in size with the "Avalon"?

A. A little smaller in carrying capacity but of better construction in my judgment than the "Avalon."

Q. Was she sold in 1916? A. Yes, sir.

Q. For what price? A. For \$250,000. [137]

Cross-examination.

Mr. CAMPBELL.—Q. The "San Ramon" you say was a better constructed vessel than the "Avalon"? A. Yes, sir.

Q. She was sold in the Atlantic? A. Yes, sir.

Q. And she was sold on such terms that the purchaser was able to pay for her out of her earnings, was she not? A. Yes, sir.

Q. Sold for a dollar down and a dollar a month forever, to be earned out of the operations of the vessel?

A. It was \$100,000 down and \$5,000 a month with the understanding that they should pay us the balance if they would get a 5% discount.

Q. They offered to pay the price on a 10% discount but they would not sell it: isn't that a fact?

Mr. LILLICK.—That is objected to as not cross-examination and as immaterial.

A. We offered them a discount of 2 or 3%. When I saw them down in New Orleans on this trip they said they thought they were entitled to a 5% discount

(Testimony of Fred D. Parr.)

and I told them I could not give it.

Q. In the agreement of sale there was nothing said about a 5% discount, was there?

A. Nothing at all.

Q. And at the time you sold the vessel you knew that you were selling her on such terms that these people could pay for her out of the earnings of the vessel? A. Yes, sir.

Q. You said that the "Rosalie Mahony" is a younger vessel than the "Avalon"?

A. I think she is one year younger.

Q. And the "Mary Olsen" was not as old as the "Avalon"? A. One year younger.

Q. They were sold in the Gulf of Mexico, were they not? A. Yes, sir.

Q. And the prices that were obtained for those vessels were the highest prices which were obtained for any vessel of the steam schooner class?

A. They were just at that time, yet they were [138] not considered a very good sale as things went.

Q. But there was a specially limited market in the Gulf of Mexico for that type of vessels?

A. They have been buying them ever since.

Q. Was not the market limited?

A. They had bought about 10 vessels down there of the steam-schooner type.

Q. But that was a market which was limited by the demands or the needs of the so-called mahogany trade on the west coast of Central America?

A. Partially that and carrying lumber down to the

(Testimony of Fred D. Parr.)

West Indian ports and over to Trinidad and bringing sugar back.

Q. You said that the "Rosalie Mahony" and the "Mary Olsen" were not in good condition; you didn't see either one of those vessels, did you?

A. That is the statement of Mr. Olsen, the owner.

Q. But you yourself have no knowledge of their condition?

A. No, sir, not other than his statement.

Q. Do you wish to say now on the witness-stand in court that the placing of these vessels in the mahogany trade worked to the detriment of the vessel?

A. There is a difference of opinion on that. Mr. Olsen says that it does, from his experience with those two vessels.

Q. But there is a difference of opinion, isn't there?

A. Yes.

Q. Many men engaged in that business contend that the mahogany trade does no more harm to a vessel than the ordinary lumber trade on this coast?

A. That is correct.

Q. No sales have been made of the wooden type of vessels anywhere near the price of the "San Ramon"?

A. Except that I offered \$200,000 for the "O. M. Clark" last week, and they would not accept it, less 55.

Q. Last week? A. Yes, sir.

Q. Values have been going up very rapidly since the 1st of September, 1915, haven't they?

A. I don't know that the values [139] have

(Testimony of Fred D. Parr.)

been going up; there has been stiffening owing to the turning over of vessels.

Q. By stiffening you mean that the prices are increasing?

A. The supply has been lessened very greatly. The values have not been going up very much.

The COURT.—At least the offers are being raised.

Mr. CAMPBELL.—I think that is all.

Redirect Examination.

Mr. LILLICK.—Q. The “Rosalie Mahony” and the “Mary Olsen” were vessels that were sold by two partners, were they not, at a time when the partners had had some difficulty? A. Yes.

Mr. CAMPBELL.—Excuse me a moment. Are you testifying or is the witness testifying?

Mr. LILLICK.—Mr. Campbell, if you desire to make an objection to my question on the ground that it is leading you can do so.

Mr. CAMPBELL.—I do then.

The COURT.—The objection is sustained.

Mr. LILLICK.—Q. What was the situation with reference to the sale of the two vessels that you said were sold for \$160,000 with reference to their ownership?

A. Those were among the first sales made on the Atlantic side of steam-schooners and they were very anxious to clean up and that is why they accepted the price they did.

Mr. CAMPBELL.—I move to strike out the statement that they were very anxious to clean up, and so forth, on the ground that that is a conclusion of the

(Testimony of Fred D. Parr.)

witness and not a subject of expert testimony.

The COURT.—Let that go out.

Mr. LILLICK.—Q. Do you know that from the gentlemen involved, Mr. Olsen and Mr. Mahony?
[140]

Mr. CAMPBELL.—That is objected to as hearsay.

The COURT.—Yes, that is hearsay.

Mr. LILLICK.—Q. Those two vessels had no passenger accommodations, had they? A. No, sir.

Q. The "Avalon" had passenger accommodations?

A. Yes.

Q. That also makes a difference in the price of those vessels, does it not?

A. It is usually figured that passenger accommodations, together with the equipment, cost about \$10,000 on the average steam-schooner.

Q. The statement that you made upon cross-examination with reference to values, is that based upon any change with reference to freight rates on lumber from the Columbia River to San Pedro and the Columbia River to San Francisco?

A. The rates are about the same and have been for the past nine or ten months.

Q. So that the freight rates were the same in June, 1916, as they are to-day? A. Coastwise, yes.

Q. I think you said that the "Mary Olsen" and the "Rosalie Mahony" were not considered very good sales: what did you mean by that?

A. They figured that more money could be obtained for the vessels at the time they were sold.

(Testimony of Fred D. Parr.)

Q. So that \$160,000 was not the price that they might have obtained?

A. In the judgment of those who were dealing in steam schooners.

Mr. CAMPBELL.—Q. You had nothing to do with the sales of the vessels at all? A. No, sir.

Q. All you knew about that is what somebody had told you? A. That is right.

Mr. LILLICK.—That is our case, your Honor.
[141]

Testimony of R. A. Hiscox, for Respondent.

R. A. HISCOX, called for the respondent.

Mr. CAMPBELL.—Q. Have you any personal knowledge of the transaction that was entered into between the Steamer Avalon Company and the master and the crew of the "Avalon" by which the Avalon Company purchased whatever claim the crew might have for compensation for salvage in this case?

Mr. LILLICK.—Objected to, if your Honor please, upon the ground that it is immaterial, irrelevant and incompetent. I said that I deemed that the ruling made already in this case with reference to that was in my opinion an error, with all due respect to the Court, and I think it will only take a moment's argument, perhaps only a statement of the situation—

The COURT.—Will it take any longer than it would to take the testimony?

Mr. LILLICK.—Yes, for this reason, your Honor,

(Testimony of R. A. Hiscox.)

that counsel on the other side is going into this matter apparently with the desire of impressing the Court with a situation which the Court ought not to take into consideration at all.

The COURT.—If the Court should not it won't. I would rather have the testimony and determine later whether it should be considered, or not, rather than find out later that it should have been taken and not have the testimony before me.

Mr. LILLICK.—I would like to make the statement, if your Honor will permit me to do so. I believe it my duty to do so. The owners of vessels have no right to trade with the master or the crew with reference to their wages in any different sense than an outsider. The law specifically prohibits a sailor from assigning his wages. Cases, without any criticism after the decisions have been rendered, in courts entitling, I think, this Court to take them into consideration in passing upon the question, [142] and the rule apparently has never been questioned, that in salvage cases—and I have a case absolutely squarely in point, if the owners of the steamer buy from the crew their claim to salvage, and have an assignment made from them, the Court disregards it. The crew are in exactly the same situation whether the owner has bought from them or whether he has not. We are before the Court here to-day in exactly that situation. It is the apparent attempt of the respondent in this case to have brought to the Court's attention an agreement made with these sailors for the purpose of having this court find—I am infer-

(Testimony of R. A. Hiscox.)

ring this—that no amount paid to those sailors by the owners of this steamer should be taken into consideration by the Court in fixing the amount of salvage to be awarded to those sailors—

The COURT.—Oh, no, nothing of that kind. The only effect it would have on the Court, would be to see whether the other fellow is entitled to sue, or not. They could not both sue if it was a valid assignment.

Mr. LILLICK.—Both of them have not sued. When this libel was drawn I was in New York. It was drawn in my office during my absence. The original libel is a libel against the Hammond Lumber Company and the steamer “General Hubbard.” It was drawn for the Avalon Company against the steamer “Hubbard,” not on behalf of the master and the crew but on behalf of the Steamer Avalon Company and no one else. It did not have in it the language, on behalf of the master and the crew. There was nothing in that libel that would have entitled the Steamer Avalon Company to recover any amount from the owners of the cargo and the owners of the steamer “General Hubbard” to give to the crew. There was at that time however an agreement between the owners of the steamer “Avalon” and the master and the crew that the owners of the “Avalon” should pursue the right of action of the master and the [143] crew against the “Hubbard” and against her cargo, and then enter into an agreement between each other subsequently that the amount should be amicably adjusted between them, or if not amicably adjusted then that the master and the crew should

(Testimony of R. A. Hiscox.)

have the right of consulting independent counsel. That agreement is attached to the answer to the interrogatories. Now, the situation here is that the owners of the "Hubbard" are attempting to cut down—your Honor said a moment ago it would not be considered so we will drop that from the discussion. We are in a situation here with pleadings and with testimony that entitle me, and I do most seriously and earnestly ask the Court for an award for those sailors and an award for the Steamer Avalon Company. It is for the sailors hereafter, if they cannot agree upon what they have done with the owners of the steamer "Avalon," to ask and receive the amount of salvage that this Court awards them. And inasmuch as I represent both parties I want to state to the Court and I want to state to counsel on the other side that whatever award is made by this Court to the crew of this vessel is going to be paid to the crew of that vessel, and I am going to see that it is because I am in a situation where otherwise it would be not only taking advantage of the Court but taking advantage of the situation. Counsel upon the other side has brought this matter up perhaps feeling that the way in which it was brought to his attention ought to have the matter brought before the Court in such a way that his client should be entitled to any saving made by my client. My client is not going to make such a saving and whatever award is made here is going to be paid to this crew. The parties to this action contemplated a settlement at one time, and there was the kindest feeling between the

(Testimony of R. A. Hiscox.)

owners of the steamer "Avalon" and the Hammond Lumber Company and the Hubbard Steamship Company. In all seriousness I ask this Court to award the crew a [144] definite amount, and that amount is going to be paid to the crew, and I pledge my connection with the case that it is going to be paid to the crew notwithstanding whatever arrangement may have been made already. In a similar case where owners of a steamer had performed salvage service and had obtained from the crew an assignment for a much less amount than was allowed the crew the Court held that the owners of the steamer involved could collect, and as I remember the language, it would be credited with the amount that they had already paid the crew. But I do say to the Court and to counsel that whatever award is made in this case to the crew of the steamer "Avalon" is going to be paid to that crew and we are going to credit on that amount whatever amount has been already paid. My position here before the Court is such that I think it proper that I should pledge my connection with this Court that that be done. Now, that is the situation and we seriously object to the attempt to put before the Court any question with reference to this assignment at all. I think Mr. Campbell will agree with me that it is the law, and there can be no question about it, that the rights of the members of the crew in a salvage case cannot be assigned, and that any assignment made by them is invalid. Is not that the law, Mr. Campbell?

Mr. CAMPBELL.—I don't know.

(Testimony of R. A. Hiscox.)

Mr. LILLICK.—Well, it is the law, if your Honor please, and I can cite authorities to that effect.

Mr. CAMPBELL.—I have heard Mr. Wall urge before this Court that the master of a vessel could not make an arrangement at sea with the master of another vessel by which the crew can be cut off from their rights.

The COURT.—Well, I am not like Judge Wallace; he said he would rather hear the argument on a motion for a new trial; I [145] would rather hear it upon the submission of the case. The testimony will be taken.

Mr. CAMPBELL.—All I want is simply a frank disclosure of what the situation was.

Mr. LILLICK.—I will make the disclosure, if your Honor please. I can give it to you Mr. Campbell, in just one minute.

Mr. CAMPBELL.—Maybe you can assist us then so as to save time. I don't think you have made a complete disclosure of the facts in the answer to the interrogatory.

Mr. LILLICK.—Now, that is not an attempt to say that I personally did not state to the Court what the situation was?

Mr. CAMPBELL.—Not at all.

Mr. LILLICK.—Now, if your Honor please, you this morning stated you sustained an interrogatory, that they did not have a right to know what had been paid—

The COURT.—I had in mind the proposition that if a valid assignment had been made only one party

(Testimony of R. A. Hiscox.)

could sue, the assignee, and that the respondent could not be subjected to two different actions.

Mr. LILLICK.—If your Honor please, they have not been subjected to two different actions.

The COURT.—Well, we have passed that point; you had better proceed.

Mr. LILLICK.—All right, your Honor. The fact is this: when the vessel arrived in San Francisco, the members of the crew I think were on the way down to San Pedro; will you correct me, Mr. Campbell and Mr. Burnett?

Mr. CAMPBELL.—I don't know about it, Mr. Lillick. I know you paid your people so much. Mr. Hiscox probably handled this.

Mr. LILLICK.—Q. Did you handle this, Mr. Hiscox?

A. No, sir. Mr. Wood went south and handled the transaction. [146]

Mr. LILLICK.—You do know, Mr. Campbell, that the steamer came in and that Mr. Wood and the Hammond Lumber Company were very friendly, they believed they were going to settle this case without litigation; that is a fact, is it not?

Mr. CAMPBELL.—I don't know. I don't know what they believed. I know what they tried to do. I know that your people wanted too much money and we could not pay it.

Mr. LILLICK.—We have offered a fair settlement. We would have been willing to arbitrate but counsel upon the other side and his attorney would not pay enough money—

(Testimony of R. A. Hiscox.)

The COURT.—Well, I suppose that is what all law suits are about.

Mr. LILLICK.—Yes, your Honor. However, the vessel was libeled, the cargo was on her; they wanted to reach the cargo as well as the freight; the libel was filed. And that is one of the reasons why the amount was put so low because the parties were so friendly and because it was thought that—

Mr. CAMPBELL.—Well, never mind about that. Let us have the facts. Mr. Lillick, I feel just like this, that we smoked them out; now we want to know what we smoked out.

Mr. LILLICK.—Mr. Campbell, that is very improper. It is hardly proper for you, with your standing before this Court, to say that you have smoked us out. You have done nothing of the sort. In the statement that you have smoked us out you—

The COURT.—We will never get anywhere unless one or the other of you will take up the running and continue.

Mr. LILLICK.—All right, your Honor, we will run. The agreement was made with the crew, it is attached to the answer and reads as follows: [147]

**Libelant's Exhibit No. 2—Agreement Dated
August 5, 1916, Between Owners of Steamer
“Avalon” and Crew.**

We, the undersigned officers and members of the crew of the steamer “AVALON,” on board said vessel on or about July 25, 1916, during the time said steamer “AVALON” performed services to the

American steamer "GENERAL HUBBARD," by towing said steamer "GENERAL HUBBARD," in a damaged condition, into, or near, the Port of Astoria, Oregon, hereby agree to place, and hereby do place, whatever claim we, or any of us, have against said steamer, "GENERAL HUBBARD," and her cargo, for such services in the hands of the STEAMER AVALON COMPANY, a California corporation, for collection, by suit or otherwise. It being understood that, so far as any claim against said steamer "GENERAL HUBBARD" is concerned, we are to act with the owner of the steamer "AVALON," and the STEAMER AVALON COMPANY is hereby authorized and empowered to settle for the master, owner and crew of the said steamer "AVALON" with the said steamer "GENERAL HUBBARD," and her owners, for such lump sum as the STEAMER AVALON COMPANY may be advised; the several amounts, or proportions, to be paid to the members of said crew to be afterwards adjusted between the owners of the steamer "AVALON" and the undersigned.

In the event that the owners of the steamer "AVALON" and the undersigned, members of her crew, cannot come to an amicable adjustment between themselves, as to their several proportions, the said undersigned to have the privilege of employing independent counsel for the purpose of such settlement between themselves and the owners of the said steamer "AVALON," but not as between themselves and the owners of the said steamer "GENERAL HUBBARD" and her cargo.

In consideration of the aforesaid agreement on the part of the officers and members of the crew of said steamer "AVALON," the said STEAMER AVALON COMPANY hereby promises and agrees to use its best endeavors to secure as large an award for such services as [148] lies in its power, to make a just and equitable distribution to the aforesaid undersigned officers and members of the crew of the said steamer "AVALON."

Dated: Redondo, Calif., Aug. 5, 1916.

Now, that was the agreement, if your Honor please, that was entered into by the owners of the "Avalon" with the members of her crew. The vessel was attached, as I remember it, and seized on August 5, was she not?

Mr. CAMPBELL.—About that date.

Mr. LILLICK.—Yes, it was about that date. Mr. Wood went South and obtained this agreement from the sailors. The libel that was filed did not include the right of action of the sailors. The steamer "Avalon" was not representing them in that litigation. I returned from New York, went over the papers and found that Mr. Wood had done with this agreement that had been drawn in the office in accordance with a form that I had in another case, because it has been Mr. Campbell's experience I think as well as my own that in dealing with a situation of this character unless you get the crew to agree to go with you you are going to be involved in another difficulty and another trouble when you come to settle. We thought we were going to settle. That was the situation in the office at the time—

Mr. CAMPBELL.—Let me interrupt you: your libel was filed on August the 1st and that assignment was taken on August 5.

Mr. LILLICK.—That is right. Mr. Wood went down south and got this signed. Mr. Wood in addition to this took from those sailors an assignment in which he specified the amount which he paid them. Now, I am prepared to state to the Court what that amount was but I don't want to state it to the Court. It is not proper. The Court properly ruled upon that question—

The COURT.—Well, I don't know whether I was dreaming, or [149] not, but I heard what you stated in your opening statement, that they got half a month's wages.

Mr. LILLICK.—That is in the testimony of the captain of the "General Hubbard." Now again, I repeat, there is before this Court two separate actions; one action by the Steamer Avalon Company, in which of course we expect to have an award, and then there is another action by the captain and the members of the crew. For the benefit of the Hammond Lumber Company and the Hubbard Steamship Company, that kind of proceeding I think will never be taken again, certainly not if my office has anything to do with it.

Mr. CAMPBELL.—Well, we accept your apology.

Mr. LILLICK.—It is not an apology. I resent counsel's imputation. In the first place, I had nothing to do with this, I was out of town. But it was absolutely proper and all right. For counsel to say that he smoked us out, it is not exactly a proper in-

situation for Mr. Campbell to make against me when we have known each other so long. [150]

Mr. CAMPBELL.—I make no imputation against you whatever; I have too high a regard for you to do so. I want the facts.

Mr. LILLICK.—You have the absolute true facts. I ask again the Court to indicate in your opinion a statement of how the award shall be distributed, what proportion to the Avalon Company and what proportion to the crew, and to specify, if the Court will, that that payment shall be made in accordance with the amounts that the various members of the crew had.

Mr. CAMPBELL.—I will ask you this question, Mr. Lillick, or I will ask it of the witness: As I understand it, after the filing of this libel, Mr. Wood went down to San Pedro and got this document which you have attached to your answer to the interrogatories—

Mr. LILLICK.—You had better have the original.

Mr. CAMPBELL.—I don't care about that. You can file it with the Court.

Mr. LILLICK.—I will have this filed as our exhibit.

(The document was here marked Libelant's Exhibit 2.)

Mr. CAMPBELL.—Now, I understand you to say that after that talk Mr. Wood paid the crew a certain amount of money.

Mr. LILLICK.—He did.

Mr. CAMPBELL.—Is it possible he paid the crew a certain sum of money without procuring some docu-

ment from them, some receipt?

Mr. LILLICK.—I told the Court he procured an assignment.

Mr. CAMPBELL.—We are entitled to see that assignment, I think, so that we may know the character of the assignment. They have attached to the interrogatory and said this is the assignment.

Mr. LILLICK.—I beg your pardon, Mr. Campbell. Now, please read the answers, if you will. The Court said we need not tell you how much we were paid. [151]

Mr. CAMPBELL.—“1. In answer to the first interrogatory, libelants allege that they, and each of them, have transferred and assigned unto the Steamer Avalon Company the claims which they had against the steamer “General Hubbard”, and her cargo, but upon the understanding that the Steamer Avalon Company might sue to recover the amount due libelants, and, in such suit, commence such proceedings as said Steamer Avalon Company might be advised, under the name, and for the benefit, of libelants.

“2. In answer to the second interrogatory, libelants allege that such transfer was made to the Steamer Avalon Company.

“3. In answer to the third interrogatory, libelants refer to their answer to the preceding interrogatory.

“4. In answer to the fourth interrogatory, libelants allege that said transfer was made upon the 5th day of August, 1916.

“5. In answer to the fifth interrogatory, libel-

ants attach hereto a copy of the transfer made by them, and each of them, to the Steamer Avalon Company.’’

Now, it appears that there is a subsequent transfer or subsequent assignment to that copy.

Mr. LILLICK.—There is.

Mr. CAMPBELL.—I think I am entitled to have disclosed what that assignment is.

The COURT.—I think you are entitled to all the facts.

Mr. LILLICK.—I don’t know where that is, but it will be obtained. We will have to adjourn anyhow until this afternoon. It will be brought out this afternoon. At the same time, if your Honor please, that is produced under objection, because it is objectionable and it ought not to be in the record at all.

The COURT.—Then it ought not to have been made.

Mr. LILLICK.—Your Honor, this is something that my office has nothing to do with. They made it down south. They apparently got down there and said, “We will straighten this thing all [152] out, we have this other arrangement; now, we will just take an assignment from them and clean up the whole thing at once.”

Now, you say it ought not to have been made. It ought not to have been made.

The COURT.—I don’t say it ought not to have been made, but I say if it was made it should be produced.

Mr. LILLICK.—It was invalid; it was confessedly invalid.

The COURT.—Well, we will take the matter up at two o'clock.

(A recess was here taken until two P. M.) [153]

AFTERNOON SESSION.

Mr. LILLICK.—If your Honor, please, I am going to put on one more witness, with Mr. Campbell's consent.

The COURT.—Very well.

Testimony of William H. Wood, for Libelant.

WILLIAM H. WOOD, called for the libelant, sworn.

Mr. LILLICK.—Q. Mr. Wood, you are the president of the Hart-Wood Lumber Company?

A. Of California.

Q. And of the Steamer Avalon Company you are the president? A. Yes, sir.

Q. Mr. Wood, had you in 1916, another steamer of about the same size as the steamer "Avalon"?

A. The "Solano"; it was a little bit larger.

Q. What were the relative sizes of the two vessels?

A. I think that the "Solano" would carry about 100,000 more than the "Avalon." The "Avalon" carries about a million and the "Solano" about 1,100,000.

Q. What was the difference in their costs.

A. \$5,000. The "Solano" cost \$5,000 more than the "Avalon."

Q. In 1916, did you have any opportunity to sell the "Solano"? A. I did.

Q. At what price? A. \$225,000.

Q. And other than the difference in their cost price,

(Testimony of William H. Wood.)

\$5,000, what have you to say as to their difference in value—new or old?

A. The "Solano" was built two years after the "Avalon."

Q. Was the "Avalon" in good shape in 1916?

A. Very good.

Cross-examination.

Mr. CAMPBELL.—Q. You were thoroughly acquainted with the "Avalon" in 1916, were you?

A. Yes, sir. [154]

Q. You say that the "Solano" was a larger vessel than the "Avalon"? A. Yes, sir.

Q. Considerably over 100 tons difference in the two vessels, was there not?

A. Well, I could not say as to the measurement.

Q. Was not the "Solano's" gross tonnage about 943 and the "Avalon's" about 818?

A. Well, that may be correct; I don't know.

Q. The "Avalon" was two years older than the other one? A. That is correct.

Q. Do you recall that the indicated horse-power of the "Solano" was about 700 and that of the "Avalon" about 550?

A. No, that is wrong; they are exactly the same.

Q. Exactly the same?

A. The same size boilers and the same size engine; they are duplicates.

Q. Why didn't you sell the "Solano"?

A. Because I didn't want to.

Q. You needed it in your own personal business.

A. Yes.

(Testimony of William H. Wood.)

Mr. LILLICK.—Q. She was worth \$225,000 to you, was she, Mr. Wood?

Mr. CAMPBELL.—Don't do the testifying, Mr. Lillick.

Mr. LILLICK.—Q. Was she worth \$225,000 to you, Mr. Wood?

A. I thought she was.

Q. And the other man was willing to pay \$225,000 for her? A. Yes, sir.

Mr. CAMPBELL.—Q. When you signed that libel and swore to it, you knew what you were swearing to, did you not?

Mr. LILLICK.—Q. Mr. Wood, since that question has been brought out, you remember that the value of the "Avalon" as specified in that libel was \$125,000; in view of the question that Mr. Campbell has just asked you if you knew what was in it, [155] will you state the reason, if any, you had for setting \$125,000 as the value of her?

A. At the time we made out the libel, Mr. Olsen asked me what we should put in as the value of the "Avalon", and I told him we didn't want to put in any inflated values on any of our ships, and we would put it in at just exactly what she cost us.

Testimony of A. F. Pillsbury, for Respondent.

A. F. PILLSBURY, called for the respondent, sworn.

Mr. CAMPBELL.—Q. Captain, subsequent to the time, or about the time, that the "General Hubbard" was towed into the Columbia River by the "Avalon,"

(Testimony of A. F. Pillsbury.)

did you make an appraisal or an estimate of the value of the "General Hubbard"?

A. I did.

Q. By whom were you employed to make that, and for what purposes?

A. I think I was employed by the George E. Billings Company; Mr. Wilfred Page is the adjuster for that company. The purpose was for general average, as I understood it.

Q. To be used in a settlement of any rights and liabilities that might exist or result from this service between the cargo and its underwriters and the owner of the vessel and its underwriters?

A. That is my understanding of the purpose of such work, such valuation.

Q. And George E. Billings & Co. were the average adjusters who were making up the adjustment?

A. That is right.

Q. As of what time did you make the appraisal?

A. May I look at my notes?

Q. Yes. I think the Court will tell you that you may refresh your recollection from any memoranda made at that time.

A. I have before me my copy of the valuation report I made. The date it was issued was August 26th, 1916; the date of the valuation [156] was the date of the arrival of the "General Hubbard" at San Pedro, on or about August 6th.

Q. After the "General Hubbard" was towed into the Columbia River, do you know whether or not it is a fact that she was subsequently towed with her

(Testimony of A. F. Pillsbury.)

cargo of lumber to San Pedro from the Columbia River before repairs were made to her disabled propeller? A. That is my understanding.

Q. And this appraisalment was made at the termination of that voyage upon which she delivered her cargo at San Pedro? A. Yes, sir.

Q. What, in your judgment, was the value of the "Hubbard" at that time?

A. I placed a value of \$350,000 on the "Hubbard" on her arrival in San Pedro in the damaged condition, the damages estimated to cost about \$12,000

Q. Do you know what they did in fact cost to repair? A. No, I do not.

Q. Will you state to the Court as fully as you can your knowledge of the market for vessels of the type of the "General Hubbard" at that time, and the factors which you took into consideration, Captain, in fixing this value. What I want you to do is to frankly and openly discuss with the Court, or, rather, tell the Court the basis upon which you arrived at that value.

A. Well, in the first place, I of course, try to keep more or less familiar with the sales and the market values of vessels in this port and on this coast, and to some extent in other parts of the world; as everybody knows, during the last eighteen months, beginning about September, 1915, there has been a very great advance in the value of almost all shipping property, and it is somewhat difficult to make a valuation of vessels since that time. There are several things to be considered. Occasionally a

(Testimony of A. F. Pillsbury.)

buyer comes into the market and pays a very big price for the vessel; [157] then, again, the next day, or the same day, there might be several owners who would be willing to sell at that price, but there would be no buyers. At other times you have to consider and you do consider all the time what it would cost to replace vessels of the class that we are valuing. For instance, if we are to place an order for a new vessel, how much would it cost? The original value is no criterion any more, because the market value is so much greater than the value of a vessel that was built two or three or four years ago. Then there are other things to consider. Owners having a vessel for trade, they do not want to sell at some of the big prices, and, therefore, very properly they say it might be unreasonable to value a vessel at a price that somebody might sell a similar vessel at. In the valuing of the "Hubbard," I took into consideration, as far as I could, the cost of duplicating vessels of a somewhat similar type. An order for a vessel, if placed then, would only get the delivered vessel in about twelve months afterward. That price at that time was about \$125 per dead weight ton for the ordinary class steel freight steamer, and it was upon those estimates I based the value of the "Hubbard"—very largely on those figures.

Q. Do you know what kind of buyers the vessels that were sold upon this coast of the type of the "Hubbard" went to?

A. The greater part of them went to Norwegians.

(Testimony of A. F. Pillsbury.)

W. R. Grace & Co. were in the market in the early part of last year and did buy two of our vessels; they bought the "Santa Rita," which was the "William Chatham," and which was a little smaller than the "Hubbard," for either \$310,000 or \$315,000 net; that I checked up with W. R. Grace & Co. Then they bought the John A. Hooper a few months earlier; she is nearly 4,000 tons dead weight; they paid \$525,000 for her. The "Henry Scott" they wanted to buy, but they [158] would not pay the price the owners asked.

Q. After the Norwegians came into the market and began to buy, did they continue buying, or was there subsequently a slump in the market later in the fall?

A. Well, I don't know. I have not been in touch with the Norwegians. I surveyed these vessels—several of them that have been sold; I surveyed them for the sellers. I have not been in touch with the Norwegian purchasers, so I do not know what is in their minds.

The COURT.—Q. That was not exactly the question, Captain. The question was, after they had entered the market and quit buying, if there was then a slump in the market?

A. Well, I understood with one vessel, in fact I think one of the Hammond fleet, the "Fenwick," she was tied up for some little time after she was delivered to her purchaser on account of the purchaser basing his purchase price on a dead weight, which, with the Norwegian free board, would give

(Testimony of A. F. Pillsbury.)

a dead weight much less than he had calculated. I think that when those Norwegian purchasers found out that these vessels could not carry with their freeboard, or with the freeboard of any classification, if assigned, that then they were not so much interested—

Q. That is, you mean they were not so much interested in this type of vessel?

A. In this particular type of vessel, because they are built for lumber carrying.

Q. Was the "Hubbard" a single-deck vessel or a double-deck vessel? A. A single deck.

Q. Was she a vessel with a high or low freeboard?

A. She would have little or no freeboard with lumber.

Q. Had you made a valuation of the "Hubbard" on a previous occasion? A. Yes, I had.

Q. When was that?

A. The valuation was made under date of July 29, 1914, and the valuation was to be made as of date [159] February 16, 1914.

Q. What value did you give her then?

Mr. LILLICK.—We object to that because that is more than a year before this matter.

The COURT.—That seems to be true. If there was a stable valuation running through this period that evidence might be of some value, but it would not throw much light on what a vessel was worth a year and a half after.

Mr. CAMPBELL.—I withdraw that.

Q. When was she built, Captain, and by whom?

(Testimony of A. F. Pillsbury.)

A. The Graig Shipbuilding Company, in 1911.

Q. Do you know what her cost was?

A. Well, I know very closely. On either one of these costs, either one or both. I inquired of her owners as to her cost, and I think they showed me the books; I would not know otherwise very closely; it was about \$ 200,000.

Cross-examination.

Mr. LILLICK.—Q. Was not the actual cost \$216,000, Captain, instead of \$200,000?

A. Well, I don't understand it so.

Q. You say you saw it in their book; I am only speaking from information that I have.

A. I think it was \$201,000, or something like that, or thereabouts.

Q. Are you not mistaken as to what you testified to about the "Fenwick" having been held up in her sale by reason of the controversy that arose afterwards, wasn't that another vessel instead of the "Fenwick"?

A. No, I think it was the "Fenwick" that laid over in Oakland for about two weeks.

Q. Was not the "Fenwick" sold for approximately \$425,000?

A. I think probably she was.

Q. They took her, in any event, did they not, Captain? A. Yes, sir. [160]

Q. When was the "William Chatham" sold?

A. I don't know whether my books here will show it or not. I will see. I made a report on her and inquired of Grace & Co. what they paid for her, but

(Testimony of A. F. Pillsbury.)

I have not it in this book; this is a 1914 book. I think it was somewhere in March or April.

Q. Of what year?

A. 1916. I don't know that I have it here. I have the "John A. Hooper"; that was in May, 1916.

Q. Do you remember the "Chatham" was sold before or after that?

A. I think she was sold before.

Q. Freight rates had not risen and did not rise until about June, 1916?

A. There had been little or no change in freight rates since early in February, 1916; very little.

Q. You say there has been very little?

A. There has been very little change since February, 1916.

Q. Aren't you mistaken about that, Captain?

A. What are you referring to?

Q. I am referring to lumber freights.

A. Oh, I am referring to general offshore freights.

Q. The lumber rates applicable to vessels running in the coastwise trade, such as the "Avalon" and the "Hubbard" were running in, did not commence to rise until June, 1916?

A. They commenced to rise in December, 1915, or January, 1916, but they had not gone up to their present high prices until midsummer, 1916.

Q. Is the "Chatham" a smaller or a larger vessel than the "Hubbard"?

A. The "Chatham" is a little smaller, but cost more money.

Q. When was the "Santa Rita" sold?

(Testimony of A. F. Pillsbury.)

A. The "Santa Rita" was the "Chatham."

Q. Oh, they changed the name? A. Yes, sir.

Q. You were advised, were you not, Captain, of the sale of the "Hubbard" afterwards?

A. I don't know that I was; I made some [161] inquiries about it.

Q. She was sold in the latter part of August, 1916, wasn't she?

A. I understood she was sold in September, 1916.

Q. Were you told that she was under offer when you made your appraisal of her?

A. I was told she was not. I asked Mr. Stewart if she was under offer.

Q. Would it alter your opinion as to her value if you knew that she was sold for \$463,125 in October, 1916?

A. I don't think it would, not for the purpose I made it.

Q. That is just the point, Captain, not for the purpose you made it; as a matter of fact, your appraisements are made generally for insurance purposes, are they not?

A. Usually for adjustments in insurance cases; that is, as I have stated, when I make it for a general average purpose that is the purpose.

Q. And that valuation is ordinarily a valuation that, if it may be deemed conservative or radical, is conservative in its nature rather than radical, is it not?

A. Under all circumstances, I try to get as near as I can to what I think is the fair market price, but

(Testimony of A. F. Pillsbury.)

I would say very frankly, in these very unusual conditions in making a valuation I would be conservative.

Q. You say it would not alter your opinion as to the valuation of the "Hubbard" that she was sold approximately two months after you made your appraisal for over \$100,000 more than your valuation, when lumber rates had not stiffened in the meantime?

A. I don't know that I can answer that just the way you put it. If I could answer it in my way, I would say that if a number of vessels of that class had been sold at that figure, it would—if a number had been.

Q. How many vessels of the "Hubbard" and her approximate size were there on this coast at that time? A. About ten. [162]

Q. They were all running in a rather strictly confined trade, were they not?

A. No, the most of those vessels had been chartered to go offshore; it would be more profitable than the coastwise lumber trade.

Q. In computing the valuation you say you put a cost price of \$125 a ton at that time? A. Yes.

Q. Did you in computing your valuation figure upon the profit that that vessel might have made running at those rates from the period when the contract might be let and until the vessel might be delivered, it taking a year to complete her?

A. That is a thing, of course, that should be considered; on the other hand, as against that, you would

(Testimony of A. F. Pillsbury.)

get a new vessel as against one five years old, which the "Hubbard."

Q. So, as a matter of fact, your figure of \$125 a ton was taken without putting any particular stress upon the value of the vessel as a going investment?

A. No, I won't say that. I think it was, I think it was placed.

Q. Could you state, Captain, how many trips the "Hubbard" could have been expected to make within a year running from the Columbia River to San Pedro?

A. Well, I should suppose that she would make a trip about every seventeen days, or something like that, seventeen or eighteen days.

The COURT.—Q. A round trip?

A. Yes, sir.

Mr. LILLICK.—Q. And the going rate for lumber at that time was \$7 a thousand, was it not, I mean in July, 1916? A. Yes.

Q. So that the income from the "Hubbard" during that period would have been that amount less her regular running expenses? A. Yes, sir.

Q. You did not compute that specifically, did you, Captain, in making up your appraisalment?

A. I took it into consideration, yes, sir.

Q. And you figured that her depreciation for that year would [163] amount to anywhere near that amount, the amount of her profit running at that rate?

The COURT.—Not for that year, exactly, Mr. Lillick, but for the five years that she was built,

(Testimony of A. F. Pillsbury.)

Mr. LILLICK.—Yes, the captain said that she would depreciate in value and would continue to depreciate; figuring her depreciation from the original cost.

A. Well, as against that there are two things to be considered; that vessel might, on the first or second voyage, be lost, or she might be seriously damaged, which would take three or four months to repair, or she might get into a large salvage case where the owners would have to stand a large part of it. That is one reason why the owners have been willing to sell at these large prices; a number of the owners have told me that themselves.

Q. The market value of steam schooners, however, that have been sold in San Francisco in 1916 was a market value that was placed upon those vessels by the price the owners would sell for? A. Doubtless.

Q. Isn't that true, Captain? A. Yes.

Q. Now, taking into consideration again the fact that this vessel sold for \$463,125 two months after your appraisal, would you not say that that appraisal of \$350,000 that you made is rather conservative? A. If you wish.

Redirect Examination.

Mr. CAMPBELL.—Q. Captain, were any of these vessels of the type of the "Hubbard" sold for use in the lumber-carrying trade between Puget Sound and San Pedro, or did they go offshore?

A. They all went offshore, so far as I know.

Q. And for a considerable period prior to the first of August 1916, were vessels of the type of the "Hub-

(Testimony of A. F. Pillsbury.)

bard" employed in this lumber trade, or were they employed in the offshore business? [164]

Q. Do you know of any vessel of the type of the "Hubbard" which has been resold to be used in the lumber-carrying trade on the Pacific Coast?

A. No, I know of none.

Q. Where do Grace & Company operate their vessels?

A. Between the Pacific Coast of the United States and the west coast of South America and Central America.

Q. And these vessels that were sold to the Norwegians have been taken where?

A. Well, I don't know; they have gone away from here.

Q. Do you know where the "Vance" went, and the "Fenwick" went? Did they remain on this coast, or did they go to the Atlantic?

A. They have not remained on the Pacific Coast of the United States.

Recross-examination.

Mr. LILLICK.—Q. Captain, they made more money in the offshore trade than in the lumber trade, didn't they?

A. I think so.

Q. Didn't it amount to almost twice as much?

A. Well, I could not state that.

Q. With the Court's permission, and Mr. Campbell's permission, I want to make Mr. Pillsbury my own witness as to the valuation of the "Avalon."

(Testimony of A. F. Pillsbury.)

Captain, what, in your opinion, was the value of the "Avalon" in July, 1916?

A. Well, I suppose if I wanted to buy her I would have to pay about \$225,000, if I could get her.

Mr. CAMPBELL.—Q. Had you made any inspection of the "Avalon" at that time?

A. No, sir.

Q. Was she a vessel that you ever had anything to do with at all? A. Yes, sir.

Mr. LILLICK.—Q. You know all about her, don't you, Captain, you have gone over her?

A. I have inspected her on several occasions.

Q. A fine, strong, sea boat, in perfect condition, wasn't she,— [165] kept up, I mean?

A. I assume she was; when I last saw her she was in good condition; she was a well-built vessel.

Mr. CAMPBELL.—I desire to offer in evidence a certified copy of the weather bureau report from the North Head station at the mouth of the Columbia River at the time of this happening.

Mr. LILLICK.—No objection.

(The document was here marked Respondent's Exhibit "A.")

Mr. CAMPBELL.—I offer in evidence the depositions of Charles A. Watts, the master of the "General Hubbard," and of Gustave W. Johnson, the chief officer of the "General Hubbard."

Mr. LILLICK.—We took a deposition at Astoria, the deposition of the master of the United States Life Saving Station. The original deposition does not seem to have reached the court.

(Testimony of A. F. Pillsbury.)

Mr. LILLICK.—I will stipulate to a copy if you say it is correct.

Mr. CAMPBELL.—Mr. Burnett said that he had received a letter from the counsel in Astoria who took the deposition on our behalf and the letter indicated that the deposition had been sent to me; they had sent a copy of it to me; the original seems to have been mislaid in the mails.

Mr. LILLICK.—The copy may be admitted as of the same force and effect as the original.

Mr. CAMPBELL.—All I know is that this is said to be a copy of it. If the original does reach the Court, I would like to have leave to withdraw the copy; it is the deposition of O. S. Wickland.

I offer in evidence this assignment that has been produced. I will read it. (Reading:)

**Respondent's Exhibit "B"—Assignment, Dated
August 5, 1916.**

FOR AND IN CONSIDERATION of an amount of money equal to one-half month's salary in accordance with the pay-roll of the [166] steamer "AVALON," the receipt whereof is hereby acknowledged by each of us in our respective claims, we, the undersigned, officers and members of the crew of the steamer "AVALON," on board said vessel on or about July 25th, 1916, during the time said steamer "AVALON" performed services to the American steamer "GENERAL HUBBARD," by towing said steamer "GENERAL HUBBARD," in a damaged condition, into or near the port of Astoria, Oregon,

do and each of us do hereby sell, assign, transfer, set over and deliver to STEAMER AVALON COMPANY our respective claims for such services as hereinabove mentioned as we and each of us may be entitled to so far as any claim against said steamer "GENERAL HUBBARD" is concerned.

IT IS FURTHER UNDERSTOOD that we and each of us, so far as any claim against the said steamer "GENERAL HUBBARD" is concerned, are to act with the owners of the steamer "AVALON" and hereby promise and agree to use our best endeavors to secure as large an award for such services as lies in our power, and we and each of us hereby agree to hereafter execute any release, satisfaction, power of attorney or other legal instrument as may be required by the STEAMER AVALON COMPANY in settling its claim against the said steamer "GENERAL HUBBARD."

Dated Redondo, Calif., Aug. 5th, 1916.

And then follow the names, beginning with the name J. L. Christensen and twenty-two other names. I assume that the other 22 were all of the members of the crew.

Mr. LILLICK.—All of those were members of the crew of the "Avalon."

Mr. CAMPBELL.—And those are all of the members of the crew.

Mr. LILLICK.—I so understand it. We object to the introduction of the document in evidence on the ground that it is invalid [167] and is immaterial, irrelevant and incompetent.

(Testimony of L. C. Stewart.)

(The document was here marked Respondent's Exhibit "B.")

Mr. CAMPBELL.—That is our case.

Testimony of L. C. Stewart, for Libelant (Recalled).

L. C. STEWART, recalled for libelant.

Mr. LILLICK.—Q. Mr. Stewart, have you with you a list of the cost of the steamer "General Hubbard"?

A. No. I can say that the price paid the Craig Shipbuilding Company was \$200,000.

Q. Wasn't there an additional \$16,000 put on by way of equipment?

A. No, sir. The vessel complete and ready for sea, fully equipped with cargo gear, galley and cabin supplies, was \$209,329.66.

Mr. LILLICK.—That is all.

(Thereupon the cause was submitted on briefs to be filed in 15 and 15.)

[Endorsed]: Filed Apr. 12, 1917. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [168]

In the Southern Division of the United States District Court, for the Northern District of California.

IN ADMIRALTY—No. 16,110.

J. L. CHRISTENSEN et al.,

Libelants,

vs.

HUBBARD STEAMSHIP COMPANY, a Corporation, et al.,

Respondents.

No. 16,075.

STEAMER AVALON COMPANY,

Libelant,

vs.

The American Steamer "GENERAL HUBBARD," etc.,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corporation,

Claimant.

(Opinion and Order to Enter Decree in Favor of Libelant for the Sum of \$2,000 and Costs.)

MEMORANDUM.

These cases were heard together. Time is not at my disposal to review the testimony presented. My conclusions from it are as follows:

1. The service performed by the "Avalon" to the "General Hubbard" were salvage instead of towage

services, but were not attended by any special danger.
[169]

2. The crew of the "Avalon" have assigned to her owners all their claims to salvage for one-half month's pay; such amount not being unreasonable, the assignment will not be disturbed.

3. The "Avalon" is entitled to an award of \$2,000 for all the services performed, including the services of her crew.

A decree will be entered accordingly in favor of libelant, the Avalon Steamship Company, for \$2,000 and costs.

The libel of the master and crew, No. 16,110, will be dismissed.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 8, 1918. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [170]

*In the District Court of the United States, for the
Northern District of California, First Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY,

Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle,
Apparel, Furniture and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

Final Decree.

This cause coming on regularly for hearing the 26th day of March, 1917, libelant appearing by its proctor, Ira S. Lillick, Esq., and claimant and respondent appearing by its proctor, Ira A. Campbell, Esq.

AND IT APPEARING THAT THE COURT has heretofore filed its opinion herein, finding that a salvage service was performed by libelant and that the reasonable value of said service was the sum of Two Thousand (2,000) Dollars.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that libelant do have and recover from the said claimant, Hubbard Steamship Company, a corporation, the sum of Two Thousand (2,000) Dollars, together with interest thereon at the rate of six (6) per cent per annum from the 8th day of February, 1918, [171] until paid, and costs to be hereinafter taxed.

AND IT FURTHER APPEARING TO THE COURT that said steamer "General Hubbard" has been released to the claimant thereof upon stipulation for value.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that unless this decree be satisfied or an appeal be taken therefrom within the time limited by law and the rules of this court, that the claimant and stipulator on behalf of the said steamer "General Hubbard" do cause the engagement in said stipulation to be performed, or to show cause within four days after the expiration of the time to appeal why execution should not issue against them and

each of them, and, if said cause be not shown, that execution be and the same is hereby awarded against said claimant and respondent and said stipulator.

Dated February 25, 1918.

M. T. DOOLING,
District Judge.

[Endorsed]: Service of the within Final Decree and receipt of a copy is hereby admitted this 19th day of February, 1918.

IRA S. LILLICK,
Proctor for Libelant.

Filed Feb. 25, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [172]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD",
Her Engines, Boilers, Machinery Tackle, Furniture, and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corporation,
Claimant.

Notice of Appeal.

To the Clerk of the above-entitled Court and to the Respondent and the Claimant Herein, and to Messrs. Ira A. Campbell and McCutchen, Olney & Willard, Their Proctors:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Steamer Avalon Company, a corporation, libelant herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Northern District of California, entered in said cause upon the 25th day of February, 1918.

Dated: June 20, 1918.

IRA S. LILLICK,
Proctor for Libelant.

[Endorsed]: Receipt of a copy of the within notice of appeal is hereby admitted this 20th day of June, 1918.

McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant.

Filed Jan. 25, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [173]

*In the District Court of the United States, in and for
the Northern District of California, First Divi-
sion.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD",
Her Engines, Boilers, Machinery, Tackle,
Furniture, and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

Assignment of Errors.

Now comes Steamer Avalon Company, a corpora-
tion, libelant in the above-entitled cause, and claims
that in the record, opinion, decision, decree and pro-
ceedings in the above-entitled matter, in the above-
entitled court, there is manifest and material error,
and said appellant now makes, files and presents the
following assignment of errors upon which it relies,
to wit:

1. The Court erred in awarding inadequate sal-
vage to the above-named libelant.

2. The Court erred in finding and holding that
the services performed by the steamer "Avalon" to
the steamer "General Hubbard" were not attended
by any special danger.

3. The Court erred in not finding and holding that the circumstances and conditions attendant upon making fast the hawsers of the steamer "Avalon" to the steamer "General Hubbard" were dangerous to said steamer "Avalon," whereby she might have sustained damage. [174]

4. The Court erred in not taking into consideration the value of the steamer and cargo salvaged, in connection with the value of the salving steamer, together with the earning power of said salving steamer and the damages which she was likely to sustain from the commencement until the end of her salvage service.

5. The Court erred in finding and holding that Two Thousand Dollars (\$2,000) was a sufficient award for the service of the steamer "Avalon," including the service of her crew.

In order that the foregoing assignment of errors may be and appear of record, said appellant herein files and presents the same to said court, and prays such disposition to be made thereof as is in accordance with the law and the statutes of the United States in such case made and provided, and said appellant prays the reversal of the above-mentioned decree and that such judgment be entered as ought to have been rendered by the District Court of the United States, Southern Division of the Northern District of the State of California.

Dated: San Francisco, Cal., June 28th, 1918.

IRA S. LILLICK,
Proctor for Libellant.

[Endorsed]: Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 28th day of June, 1918.

McCUTCHEM, OLNEY & WILLARD,
Proctors for Claimant.

Filed Jul. 2, 1918. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [175]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle, Furniture, and Cargo,

Respondent.

HUBBARD STEAMSHIP COMPANY, a Corporation,

Claimant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, Steamer Avalon Company, a corporation, as principal, and R. A. Hiscox, whose address is Fife Building, #1 Drumm Street, in the city and county of San Francisco, State of California, and J. Fred Barg, whose address is Fife Building, #1 Drumm Street, in the city and county of San Francisco, State

of California, as sureties, are held and firmly bound unto the General Hubbard Company, a corporation, in the sum of Two Hundred and Fifty Dollars (\$250), to be paid to the said General Hubbard Company, a corporation, its successors or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, and each of our, heirs, executors and administrators, jointly and severally firmly by these presents; sealed with our seals and dated the 19th day of June, 1918.

WHEREAS, Steamer Avalon Company, a corporation, has prosecuted an appeal to the United States Circuit Court of Appeals for the [176] Ninth Circuit from a decree of the District Court of the United States, bearing date, the 25th day of February, 1918, in a suit wherein Steamer Avalon Company, a corporation, is libellant against the American steamer "General Hubbard," her engines, machinery, tackle, furniture and cargo, and wherein Hubbard Steamship Company, a corporation, is claimant:

NOW, THEREFORE, the condition of this obligation is such that if the above-named appellant, Steamer Avalon Company, a corporation, shall prosecute said appeal with effect, and pay all costs which may be awarded against it as such appellant, if the appeal is not sustained, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

J. FRED BARG.

R. A. HISCOX.

STEAMER AVALON COMPANY.

[Seal]

By R. A. HISCOX,

Secty.

The foregoing bond is hereby approved as to form and amount and sufficiency of sureties, and notice of filing said bond is hereby waived.

McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant.

The foregoing cost bond is hereby allowed and approved this 25th day of June, 1918, and the same may operate as a Cost Bond in said cause, pending the termination of said appeal.

M. T. DOOLING,
District Judge. [177]

United States of America,
Northern District of California,—ss.

R. A. Hiscox and J. Fred Barg, being severally duly sworn, each deposes and says: That he resides in the Northern District of California, and that he is worth the sum of Two Hundred and Fifty Dollars (\$250) over and above all his just debts and liabilities.

R. A. HISCOX.
J. FRED BARG.

Subscribed and sworn to before me this 19th day of June, A. D. 1918.

[Seal] J. R. CORNELL,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed Jun. 25, 1918. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [178]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle,
Furniture and Cargo,

Respondent,

STEAMER AVALON COMPANY, a Corporation,
Claimant.

Stipulation and Order Concerning Original Exhibits.

IT IS HEREBY STIPULATED AND AGREED, by and between the proctors for the respective parties hereto, that all the exhibits introduced in evidence at the hearing of the above-entitled action, before the above-entitled Court, may be omitted from the Apostles on Appeal in said cause, and may be filed in the United States Circuit Court of Appeals for the Ninth District, in the original form in which they were respectively introduced before said Court at the trial of said case, and be considered as original exhibits for the Apostles on Appeal, and said exhibits need not be printed.

Dated: June 20, 1918.

IRA S. LILLICK,
Proctor for Libelant.

McCUTCHEEN, OLNEY & WILLARD,
Proctors for Claimant and Respondent.

It is so ordered.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jun. 25, 1918. W. B. Maling,
Clerk. By C. M. Taylor, Deputy Clerk. [179]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

IN ADMIRALTY—No. 16,075.

STEAMER AVALON COMPANY, a Corporation,
Libelant,

vs.

The American Steamer "GENERAL HUBBARD,"
Her Engines, Boilers, Machinery, Tackle,
Furniture and Cargo,

Respondent,

HUBBARD STEAMSHIP COMPANY, a Corpo-
ration,

Claimant.

**Stipulation and Order Extending Time to File
Apostles on Appeal.**

IT IS HEREBY STIPULATED AND
AGREED that the time for printing the record and

filing and docketing this cause on appeal in the United States Circuit Court of Appeals, for the Ninth Circuit may be extended to and including the 17th day of August, 1918.

Dated: San Francisco, California, July 17, 1918.

EDWARD J. McCUTCHEN,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Respondent and Claimant. [180]

Order.

Pursuant to the foregoing stipulation, it is hereby ordered that the time for the printing of the record, and docketing this cause on appeal in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same is hereby, enlarged and extended to and including the 17th day of August, 1918.

Dated: San Francisco, California, July 20, 1918.

JEREMIAH NETERER,

District Judge.

[Endorsed]: Filed Jul. 20, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [181]

Certificate of Clerk U. S. District Court to Apostles on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 181 pages, numbered from 1 to 181, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the case of Steamer

Avalon Company, a Corporation, Libelant, vs. The American Steamer "General Hubbard," etc., No. 16,075, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "Praecipe for Apostles on Appeal" (a copy of which is embodied in this transcript), and the instructions of the proctor for libelant and appellant herein.

I further certify that the cost for preparing and certifying the foregoing Apostles on Appeal is the sum of Seventy-three Dollars and Ninety Cents (\$73.90), and that the same has been paid to me by the proctor for libelant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 14th day of August, A. D. 1918.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,

Deputy Clerk. [182]

[Endorsed]: No. 3197. United States Circuit Court of Appeals for the Ninth Circuit. Steamer Avalon Company, a Corporation, Appellant, vs. Hubbard Steamship Company, a Corporation, Claimant of the American Steamer "General Hubbard," Her Engines, Boilers, Machinery, Tackle, Furniture, and Cargo, Appellee. Apostles on Appeal. Upon Ap-

peal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed August 14, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.